

OWNER PARTICIPATION AGREEMENT
(2428 Central Avenue)

THIS OWNER PARTICIPATION AGREEMENT (2428 Central Avenue) (the "**Agreement**") is made as of _____, 2011 (the "**Effective Date**"), by and among the COMMUNITY IMPROVEMENT COMMISSION OF THE CITY OF ALAMEDA, a public body corporate and politic ("**CIC**"), the HOUSING AUTHORITY OF THE CITY OF ALAMEDA, a public body, corporate and politic ("**Housing Authority**"), and RESOURCES FOR COMMUNITY DEVELOPMENT, a California nonprofit public benefit corporation ("**Developer**").

RECITALS

This Agreement is entered upon the basis of the following facts, understandings and intentions of the CIC, Housing Authority, and Developer, sometimes individually referred to as a "**Party**" or collectively referred to herein as the "**Parties**".

A. In accordance with the Community Redevelopment Law of the State of California (Health and Safety Code Section 33000 *et seq.*, as it may be amended from time to time) ("**Redevelopment Law**"), the City Council of the City of Alameda (the "**City**") approved and adopted (i) on June 18, 1991, by Ordinance No. 2559, the Community Improvement Plan (as amended, the "**BWIP Community Improvement Plan**") for the Business and Waterfront Improvement Project (the "**BWIP Project**"), and (ii) on July 5, 1983, by Ordinance No. 2141, the Community Improvement Plan (as amended, and together with the BWIP Community Improvement Plan, the "**Merged Areas Community Improvement Plans**") for the West End Community Improvement Project (together with the BWIP Project, the "**Merged Projects**").

B. The property subject to the Merged Areas Community Improvement Plans is referred to herein as the "**Project Area**".

C. On June 15, 2010, the CIC approved and adopted by Resolution No. 10-167 that certain "Implementation Plan, Fiscal Years 2009/10-2013/14, Alameda Redevelopment Project Areas: Business and Waterfront Improvement Project & West End Community Improvement Project", dated March 2010, prepared by Keyser Marston Associates, Inc. (the "**Implementation Plan**"). The Implementation Plan was prepared in accordance with the requirements of Section 33490 of Redevelopment Law.

D. The Implementation Plan identified specific affordable housing projects to be developed over the next five (5) years in the Project Area. The list of specific projects includes acquisition and rehabilitation of existing buildings for very-low and low income affordable housing (the "**Project**"), on certain real property located in the City of Alameda, County of Alameda, State of California, commonly known as 2428 Central Avenue (also known as the Alameda Islander Motel), more particularly described in Exhibit A hereto and incorporated into this Agreement by reference (the "**Property**"), which the Implementation Plan identified as located within the Project Area.

E. Pursuant to the California Environmental Quality Act (“CEQA”), the City, as the lead agency has undertaken the required analysis of the environmental impacts of this project and based on its independent judgment and based on substantial evidence in the record, found the project to be exempt from CEQA pursuant to CEQA Guidelines section 15301 (Existing Facilities) and section 15332 (In-Fill Development Projects). Furthermore, the project does not trigger any of the exceptions in CEQA Guidelines section 15300.2 in that the project will not have any significant effects due to unusual circumstances or any cumulatively significant impacts and will not adversely impact any designated historic resources.

F. On January 19, 2011, the Housing Commission of the Housing Authority selected the Developer to develop the Project as further described in this Agreement.

G. On March 2, 2011, by Resolution No. _____, the CIC authorized the issuance of tax increment revenue bonds (the “**Bonds**”) to be repaid from tax increment revenues from the Merged Projects required under the Redevelopment Law to be deposited to the CIC’s low and moderate income housing fund (the “**Housing Set-Aside Revenues**”) in an amount of up to Nine Million Dollars (\$9,000,000) for development of the Project as more particularly described Section 4.3 below. Resolution No. _____ authorizes the Executive Director of the CIC or his or her designee to take the actions necessary to issue the Bonds and to use the proceeds thereof to assist in the financing of the Project.

H. The Housing Authority and Stahl-Wooldridge Construction Company, a California partnership (“**Seller**”) intend to enter into that certain Purchase and Sale of Real Property and Joint Escrow Instructions pursuant to which Housing Authority intends to purchase the Property from Seller.

I. Housing Authority and Developer intend to form a limited partnership (the “**Partnership**”) in which Housing Authority will be a limited partner, and Developer intends to assign its interests under this Agreement to the Partnership, to facilitate the financing and development of the Project.

J. The purpose of this Agreement is to address the development by Developer of the Project. The development of the Project is in furtherance of, and consistent with, the City of Alameda General Plan, the Merged Areas Community Improvement Plans, and the Implementation Plan.

K. The Property has a unique and special importance to the CIC and Housing Authority because of its location, the nature of the improvements and the uses contemplated for the Property, the location of the Property within the Project Area, and the substantial expenditures of public funds that have been and will be made within the Project Area. The CIC and Housing Authority desire to advance the socioeconomic interests of the City and its residents by promoting the productive use of underdeveloped property and encouraging quality development and economic growth, thereby enhancing housing and employment opportunities for residents and expanding the City’s property tax base. The CIC and Housing Authority also desire to obtain public benefits from the Project which advance the redevelopment objectives of the CIC and the housing objectives of Housing Authority to provide benefits to the City and its residents.

L. The CIC and Housing Authority have determined that by entering into this Agreement: (i) the CIC will ensure the productive use of underdeveloped property and foster orderly growth and quality development of the Property; (ii) development will proceed in accordance with the goals and policies set forth in the Merged Areas Community Improvement Plans; and (iii) the City will benefit from additional affordable housing. The Project proposed pursuant to this Agreement and the fulfillment generally of this Agreement are in the best interests of the City and the health, safety, morals and welfare of its residents; are in accordance with the public purposes and provisions of applicable state and local laws and requirements; and are consistent with, in furtherance of, and necessary to, the effectuation of the Community Improvement Plan.

NOW, THEREFORE, in consideration of the mutual covenants and promises set forth herein, the CIC, Housing Authority, and Developer agree as follows:

ARTICLE I DEFINITIONS AND EXHIBITS

Section 1.1 Definitions. The capitalized terms used in the preamble and recitals to this Agreement shall have the meanings given to them therein whenever they are used in this Agreement. In addition, the following definitions shall govern this Agreement:

(a) **“Agreement”** means this Owner Participation Agreement, including the attached exhibits and all subsequent amendments to this Agreement.

(b) **“CIC”** means the Community Improvement Commission of the City of Alameda, a public body, corporate and politic, exercising governmental powers and organized and existing pursuant to Redevelopment Law. The principal office of the CIC is 2263 Santa Clara Avenue, Room 120, Alameda, California 94501. Actions to be undertaken by the CIC under this Agreement may be undertaken by the CIC or, in such instances where the CIC Executive Director has the authority to act on behalf of the CIC, such actions may be undertaken by the CIC Executive Director.

(c) **“CIC Executive Director”** means the executive director or acting executive director of the CIC, as applicable, in his or her capacity as a staff representative of the CIC or his or her designee.

(d) **“City”** means the City of Alameda, California, a municipal corporation, operating through its governing body, the City Council and its various departments. The principal office of the City is 2263 Santa Clara Avenue, Alameda, California 94501.

(e) **“Commencement of Construction”** means (i) the Property has been conveyed to Housing Authority, as evidenced by a recorded grant deed (ii) all necessary building permits for rehabilitation have been obtained; and (iii) an appropriate contract for construction with a licensed contractor has been executed.

(f) **“Developer”** means Resources for Community Development, a California nonprofit public benefit corporation, whose principal office is located at 2220 Oxford Street, Berkeley, CA 94704. Wherever the term “Developer” is used herein, such term shall include its

successors and assigns.

(g) **“Development Approvals”** means the approvals applicable to the Project. The Development Approvals include any amendments thereto that are adopted from time to time in accordance with Agreement.

(h) **“Foreclosure Transferee”** means a Lender or other transferee of the Project which acquires the Project through a judicial foreclosure, nonjudicial foreclosure, or deed-in-lieu of foreclosure under any Loan.

(i) **“Housing Authority”** means the Housing Authority of the City of Alameda, a public body, corporate and politic. The principal office of Housing Authority is 701 Atlantic Avenue, Alameda, California 94501. Actions to be undertaken by Housing Authority under this Agreement may be undertaken by Housing Authority or, in such instances where the Housing Authority’s Chief Executive Officer or Executive Director has the authority to act on behalf of Housing Authority, such actions may be undertaken by the Housing Authority’s Chief Executive Officer or Executive Director, as applicable.

(j) **“Housing Authority’s Chief Executive Officer”** means the chief executive officer of Housing Authority in his or her capacity as a staff representative of Housing Authority or his or her designee.

(k) **“Housing Authority’s Executive Director”** means the executive director of Housing Authority in his or her capacity as a staff representative of Housing Authority or his or her designee.

(l) **“HUD”** means the U.S. Department of Housing and Urban Development.

(m) **“Improvements”** shall mean the buildings, structures and other improvements, including the building fixtures therein, hereafter constructed on the Property.

(n) **“Lender(s)”** shall mean each and all of the lenders providing the Loans to Developer for the Project and/or Improvements and shall also mean any entity which controls, is controlled by, or is under common control with, Lender, and which becomes a Foreclosure Transferee.

(o) **“Loans”** shall mean the loans now or hereafter obtained by Developer to finance construction and operation of the Project, as evidenced by promissory notes and secured by deeds of trust (and any related security documents, including security agreements, fixture filings, and financing statements) which are given by Developer.

(p) **“Partnership”** is as defined in Recital I above.

(q) **“Project”** is as defined in Recital D above, together with associated infrastructure, improvements, landscaping, and related facilities on the Property.

(r) **“Property”** is as defined in Recital D above and Section 2.1 below.

(s) **“Unavoidable Delay”** shall mean for purposes of this Agreement delay in Developer’s performance of its obligations under this Agreement which are beyond the reasonable control of Developer, including but not limited to work stoppage, acts of God, acts of war, civil disorders or similar acts; and/or delays that are reasonably determined by Developer, the CIC, and Housing Authority to arise from insufficient funds to construct the Project.

Section 1.2 **Exhibits.** The following exhibits are attached to this Agreement and by this reference are incorporated herein and made a part hereof:

Exhibit A	Legal Description of the Property
Exhibit B	Schedule of Performance
Exhibit C	Scope of Development
Exhibit D	Certificate of Completion
Exhibit E	Form of Promissory Note – CIC Loan
Exhibit F	Development Budget
Exhibit G	Form of Affordable Housing Agreement

ARTICLE II TERM AND DEVELOPMENT APPROVALS

Section 2.1 **Term.** The term of this Agreement shall commence on the Effective Date and continue until the initial leasing of one hundred percent (100%) of the units, unless extended or earlier terminated pursuant to Article VII below; provided, however, any Party hereto shall have the right to terminate this Agreement if Commencement of Construction has not occurred by February 1, 2013 subject to, and as provided in, Section 7.2 below, and the CIC shall have the right to terminate this Agreement as provided in Section 7.4 below.

Section 2.2 **Development Approvals.** The Project and the Property shall be developed in accordance with this Agreement, the Merged Areas Community Improvement Plans, the Implementation Plan, and the Development Approvals.

ARTICLE III PROJECT DEVELOPMENT

Section 3.1 **Development Approvals, Plans and Permits.**

(a) **Approvals.** Developer shall diligently and timely apply for all Development Approvals, and if applicable and available all extensions thereof to prevent the Development Approvals from terminating or expiring. Notwithstanding anything to the contrary in the foregoing, if any Development Approvals terminate or expire solely as a result of delays in development of the Project that are beyond the control of Developer, the termination or expiration of such Development Approvals shall not constitute a default of Developer under this Agreement.

(b) **Plans.** Concurrent with submittal of Plans, as defined below, to the City, Developer shall submit to Housing Authority and CIC proposed construction plans and specifications for the Project, including but not limited to engineering plans; architectural elevations; building, site and floor plans; building colors and materials; and parking plans

(collectively and as approved by Housing Authority and the CIC, the “**Plans**”). The Plans shall be consistent with the Development Approvals and any other City permits required as a condition thereof. Concurrent with its submittal of the Plans to the CIC and Housing Authority, Developer shall apply to the City for a building permit consistent with the Development Approvals to construct the Project and thereafter shall diligently pursue issuance of building permits for any other improvements for which a building permit is required, if any, for development and construction of the Project.

(c) Delivery if Termination. If this Agreement is terminated pursuant to Section 7.2 or 7.4 below, Developer shall deliver to the Housing Authority any plans and data in the possession of or prepared for Developer for the development of the Project and Developer shall execute any documents deemed necessary by the Housing Authority to assign Developer’s right, title and interest in any such plans and data to the Housing Authority. The Housing Authority or any other person shall be free to use such plans and data, including plans and data previously delivered to the Housing Authority, for purposes of developing the Project, without cost or liability therefor to Developer or any other person except as provided in Section 7.6 below.

(d) Use of Plans. Developer shall include in all contracts and authorizations for services pertaining to the planning and design of the development of the Project an express waiver by the person performing such services of any claims of ownership or any other interest in such plans and data and of any right to compensation or payment from Housing Authority (excluding any payment required pursuant to Section 7.6 below), in the event Housing Authority is entitled to such plans and data pursuant to the provisions of Section 3.1(c) above, and shall indemnify and hold Housing Authority harmless against any claim made by any such person asserting rights in or to such plans and data. Developer makes no representation or warranty and expressly disclaims any such representation or warranty regarding the accuracy, suitability or contents of any plans, data, drawings, reports or illustrations furnished to the Housing Authority and the Housing Authority agrees to look solely to the architect or engineer of such plans or drawings in the event of any claim, loss or damage related to, or arising out of, use of same.

Section 3.2 Rehabilitation of Project. Developer, at its expense, shall rehabilitate, or cause to be rehabilitated of the Improvements in accordance with the Plans; provided, however, Developer shall have no obligation to rehabilitate the Improvements if it is unable to obtain the necessary financing on satisfactory terms to do so, despite Developer’s good faith efforts to obtain such financing. Developer shall proceed diligently to complete such rehabilitation, subject to Unavoidable Delay.

Section 3.3 Construction Bonds. Developer shall procure, or cause its general contractor for the Project to procure, performance, material and labor, and payment bonds in an amount equal to 100% of the value of the construction contract or such other reasonable amount determined by Housing Authority, and shall furnish copies of such bonds to Housing Authority prior to Commencement of Construction.

Section 3.4 Construction Standards. Rehabilitation of the Improvements and any maintenance and repair, replacements and additions in connection therewith shall be of good quality and approved by the Lenders, should approval of the Lenders be required.

Section 3.5 Permits and Easements. Housing Authority agrees that, within ten (10) days after receipt of written request from Developer, it shall (at no expense to Housing Authority) join in any and all applications for permits, licenses or other authorizations required by any governmental or other body claiming jurisdiction in connection with any work which Developer may do, or cause to be done, pursuant to this Agreement, and shall also join in any grants of easements for public utilities necessary to the development of the Project.

Section 3.6 Site Access. Following acquisition of the Property by the Housing Authority, for the purposes of assuring compliance with this Agreement, representatives of the CIC and the Housing Authority shall have reasonable right of access to the Property at normal construction and business hours.

Section 3.7 Rehabilitation Obligations. Subject to Unavoidable Delay, Developer shall rehabilitate, or cause to be rehabilitated the Improvements within the times and in the manner set forth herein and as more particularly set forth in the schedule of performance attached hereto as Exhibit B (as updated and modified from time to time, the “**Schedule of Performance**”) and scope of development attached hereto as Exhibit C (as updated and modified from time to time, the “**Scope of Development**”).

Section 3.8 Compliance of Construction with Plans, Documents, and Laws. Developer shall carry out its obligations under this Agreement including, but not limited to, the rehabilitation of the Improvements in conformity with the approved Plans (as such Plans may be revised from time to time and, if required by applicable law, approved by the City of Alameda Community Development Department), and in compliance with all applicable laws and regulations, including all applicable federal and state labor standards and prevailing wage laws; the Uniform Relocation Assistance and Real Property Acquisition Policies Act (as amended) and the California Relocation Assistance Act, together with all related state and federal regulations); and all environmental laws.

Section 3.9 Antidiscrimination During Construction. Developer, for itself and its successors and assigns, agrees that in the rehabilitation of the Improvements provided for in this Agreement, Developer shall not discriminate against any employee or applicant for employment because of race, color, creed, religion, sex, sexual orientation, marital status, ancestry or national origin and shall comply with all federal, state and local laws pertaining to discrimination.

Section 3.10 Mechanics’ Liens. Developer shall keep the Property free of all liens by mechanics, materialmen, laborers, architects, engineers, and any other persons or firms engaged by Developer or its employees, officers, tenants, agents, consultants, and contractors (collectively, “**Agents**”) to perform any due diligence, inspection, testing and other activities pursuant to this Agreement or furnish materials or claimed to have been furnished to Developer or its Agents in connection therewith. Developer shall hold harmless, indemnify and defend the CIC, Housing Authority, and the City from and against any mechanic’s or other liens arising from such work, including any liabilities, costs, losses, damages, expenses, causes of action, claims or judgments (including court costs and reasonable attorneys’ fees) on account of such mechanic’s or such other liens. The foregoing indemnity shall survive beyond the termination of this Agreement.

Section 3.11 Cooperation. Developer, the CIC, and Housing Authority shall cooperate in good faith in designing, rehabilitating, and leasing the Project to ensure that the Project will be developed expeditiously in accordance with industry standards and in a manner that maximizes the ability to obtain tax credits, bond financing and other financing for the Project. Developer shall provide, or cause to be provided, to the Housing Authority all permit applications and submittals relating to the Project prior to submittal to the City for processing and approval. Representatives of Developer and the Housing Authority shall meet at least monthly, either in person or telephonically, to discuss the progress and status of construction of the Project.

Section 3.12 Certificate of Completion. Within thirty (30) days after the completion of the Project as evidenced by a certificate of occupancy issued by the City and in accordance with those provisions of this Agreement the CIC and Housing Authority shall verify the completion and provide an instrument substantially in the form attached hereto as Exhibit D (the "**Certificate of Completion**") so certifying. The Certificate of Completion shall be a conclusive determination that the covenants in this Agreement with respect to the obligations of Developer to complete the Project have been met. The Certificate of Completion and such determination shall not constitute evidence of compliance with or satisfaction of any obligation of Developer to any holder of a deed of trust securing money loaned to finance the Project or any part thereof and shall not be deemed a notice of completion under the California Civil Code.

ARTICLE IV PROJECT FINANCING

Section 4.1 Financing Plan. The Development Budget (as defined below), describes the proposed sources and uses of funds for construction and permanent financing ("**Budgeted Funds**").

Section 4.2 Funding Sources. To implement the Merged Areas Community Improvement Plans and the Implementation Plan, Developer, CIC, and Housing Authority shall use best efforts to implement the Project and secure all affordable housing grant funds, affordable housing loans and other affordable housing funds which may be available to the Project, including, but not limited to, funds from the following sources: Bond proceeds as described in Section 4.3 below, City HOME funds, County of Alameda HOME funds, Housing Opportunities for Persons with AIDS program ("**HOPWA**"), County of Alameda Community Housing Development Organization ("**CHDO**") HOME funds, Tax Credit Allocation Committee 9% Program, California Debt Limit Allocation Committee, and the Affordable Housing Program of a Member Bank of Federal Home Loan Bank (collectively, the "**Affordable Housing Financing Sources**"). Developer shall submit application(s) under the County Notice of Funding Availability ("**NOFA**") for County CHDO HOME funds, and HOPWA funds in a total amount of not less than approximately One Million Five Hundred Thousand Dollars (\$1,500,000).

Section 4.3 Bond Funds.

- (a) As described in Recital G above, the CIC has authorized the issuance of

the Bonds in an amount not to exceed Ten Million Dollars (\$10,000,000) (the “**Bond Funds**”) to be repaid from the Housing Set-Aside Revenues, with the net proceeds of the Bonds (Bond principal less costs of issuance and reserve fund deposits) to be used solely for development of the Project. The CIC hereby agrees to issue the Bonds in a principal amount and no later than as necessary to fund the financial assistance to the Housing Authority and the Developer described in Section 4.3(c) below, and to pledge the Housing Set-Aside Revenues to the repayment of the Bonds. Notwithstanding the foregoing, in no event shall the CIC be obligated to pay the Bonds from any source of funds other than the Housing Set-Aside Revenues, and subject to any prior lien thereon in effect prior to the date of this Agreement.

(b) In no event shall the City or the Housing Authority have any obligation whatsoever to issue any bonds or to use their own funds to provide financing for the Project. In no event shall the City or the Housing Authority incur any liability hereunder or otherwise to the Developer if for any reason the CIC fails to issue the Bonds or to make the proceeds of the Bonds available to provide the financial assistance contemplated by Section 4.3(c) below.

(c) In consideration of the Developer’s and Housing Authority’s obligations hereunder, including without limitation, Housing Authority’s obligation to acquire the Property, Developer’s obligation to complete the Project and to operate and maintain the Project, and subject to the terms and conditions set forth herein, the CIC shall provide, from the proceeds of the Bonds to the Housing Authority Eight Million Dollars (\$8,000,000) of financial assistance for acquisition of the Property, and to Developer financial assistance consisting of a CIC Loan (as defined below) in the amount of One Million Dollars (\$1,000,000) for reasonable and necessary costs of developing the Project as described in the Development Budget (the “**Development Costs**”), which costs may include predevelopment costs, property acquisition, rehabilitation costs, tenant relocation costs, construction financing, or permanent financing.

(i) Subject to the terms and conditions of this Agreement, including, without limitation, Developer’s fulfillment of the Conditions Precedent to CIC Loan Disbursement set forth in Section 4.3(c)(iv) below, the CIC shall loan to Developer, solely from the proceeds of the Bonds, One Million Dollars (\$1,000,000) (the “**CIC Loan**”). The CIC Loan shall be evidenced by a promissory note (the “**Promissory Note – CIC Loan**”) substantially in the form attached hereto as Exhibit E. No interest shall accrue on the CIC Loan, which shall be a nonrecourse deferred loan.

(ii) The obligation to repay the CIC Loan shall be secured by a deed of trust, assignment of rents, security agreement and fixture filing (“**Deed of Trust - CIC Loan**”) to be recorded against the Property in the Alameda County Recorder’s Office. The Deed of Trust - CIC Loan shall encumber the Property, shall be subordinate to any deeds of trust or other security instruments securing other financing approved by the CIC Executive Director and shall be reconveyed upon the repayment in full of the CIC Loan. The form of the Deed of Trust - CIC Loan shall be reasonably approved by the CIC Executive Director and the Developer prior to recordation.

(iii) Disbursement of CIC Loan.

(A) Subject to the terms and conditions of this Agreement,

including, Section 4.3(c)(iv) below, the CIC shall disburse the CIC Loan proceeds to Developer based on costs for the Project consistent with the provisions of this Agreement and as reasonably verified by the Executive Director of the Housing Authority. The CIC shall only disburse funds for costs contemplated by the development budget approved by the CIC and Housing Authority and attached hereto as Exhibit F (the “**Development Budget**”), which reflect the Budgeted Funds and the Development Costs described above, as such Development Budget may be revised from time to time with the Housing Authority’s Executive Director’s approval, which approval shall not be unreasonably withheld. The Development Budget shall include a developer fee in the amount of One Hundred Thousand Dollars (\$100,000) to be paid to the Housing Authority at the closing of the construction financing. Notwithstanding anything in the foregoing to the contrary, the CIC Loan proceeds shall not be used to pay for any Development Costs incurred prior to the Effective Date of this Agreement, nor to pay for costs that have been paid with any funding sources described in Section 4.2.

(B) If tax credit funds are used, following completion of acquisition of the Property, rehabilitation of the Improvements and the closing of permanent financing for the Project, Developer shall obtain a final allocation of tax credits from the Internal Revenue Service of the Project through issuance of Form 8609. Developer shall promptly provide to the CIC a copy of the cost certification prepared for the California Tax Credit Allocation Committee. If the cost certification provides that the development proceeds exceeded the costs for the Project, Developer shall pay to the CIC within fifteen (15) business days of the final capital contribution from the tax credit investor, any excess development proceeds, which shall be used to repay the CIC Loan.

(C) Notwithstanding anything to the contrary herein, each disbursement of CIC Loan proceeds shall be payable exclusively from Bond proceeds and the CIC shall have no obligation to use any other source of monies to fund the CIC Loan. The CIC’s obligation to disburse the CIC Loan proceeds to Developer shall immediately cease upon the disbursement by the CIC to Developer of a cumulative total of CIC Loan proceeds equal to One Million Dollars (\$1,000,000).

(iv) Conditions of CIC Loan Disbursement. The CIC’s obligation to disburse the CIC Loan to the Developer is conditioned upon the satisfaction or waiver by the CIC of each and all of the conditions precedent (A) through (D), inclusive, described below (collectively, the “**Conditions Precedent to CIC Loan Disbursement**”), which are solely for the benefit of the CIC, and which shall be fulfilled or waived by the time periods provided for herein:

(A) Developer shall have executed and delivered the Promissory Note – CIC Loan to the CIC and shall have executed, acknowledged and delivered the Deed of Trust – CIC Loan to the CIC.

(B) Developer shall not be in default of any of its obligations under the terms of this Agreement, and all representations and warranties of Developer contained herein shall be true and correct.

(C) Developer shall have executed, acknowledged and

delivered the affordable housing agreement substantially in the form attached hereto as Exhibit G (the “**Affordable Housing Agreement**”) to the CIC.

(D) Receipt and approval by the Executive Director of the Housing Authority of draw requests provided by Developer, together with copies of invoices and applicable documentation, including without limitation lien releases and such other documentation reasonably requested by the Executive Director, substantiating the purpose and amount requested.

(v) Repayment of CIC Loan. Subject to Section 7.7 below, Developer shall repay to the CIC the outstanding principal balance of the CIC Loan in accordance with the Promissory Note – CIC Loan until the entire outstanding principal amount of the CIC Loan has been repaid in full.

Section 4.4 Section 8 Vouchers. The Housing Authority shall reserve up to fifteen (15) units for Section 8 project-based vouchers assistance, which will be dedicated to the Project for a fifteen (15) year term, subject to obtaining HUD approval therefor.

Section 4.5 Cooperation; Cost Escalations. Developer, the CIC, and Housing Authority shall cooperate in good faith in financing the Project to ensure that the Project will be developed expeditiously in accordance with industry standards and in a manner that maximizes the ability to obtain tax credits, bond financing and other financing for the Project. Upon request by Housing Authority, Developer shall provide, or cause to be provided, to Housing Authority copies of all financing applications, documents and submittals relating to the Project for review and approval. As part of its meetings pursuant to Section 3.13 above, representatives of Developer and Housing Authority shall meet at least monthly to discuss the progress and status of financing of the Project. Developer shall use best efforts to avoid excess costs, cost escalations, and cost overruns in the development of the Project.

Section 4.6 Mortgagee Protection.

(a) Rights Subject to Agreement; Lender Not Obligated to Construct Improvements. All rights acquired by any Lender, either before or after foreclosure or transfer in lieu thereof, shall be subject to each and all of the terms, covenants, conditions and restrictions set forth in this Agreement, none of which terms, covenants, conditions and restrictions are or shall be waived by the CIC or Housing Authority by reason of the permitting of such Loans. The Lender of any Loan, including any such Lender who becomes a Foreclosure Transferee but excluding (i) any other party who thereafter obtains title to the Property or any part thereof from or through such Lender, or (ii) any other Foreclosure Transferee (other than the Lender itself), shall in no way be obligated by the provisions of this Agreement to construct or complete the Project or to guarantee such construction or completion; however, a Lender that acquires possession of the Property, either directly or through a receiver, may construct and complete the Project or such portion thereof that the Lender determines is necessary to protect the value of its security. Nothing in this Agreement shall be deemed to construe, permit or authorize any such Lender or any other Foreclosure Transferee to devote the Project or the Property to any uses or to construct any improvements thereon other than those uses or improvements provided for or authorized by this Agreement.

(b) Notice of Default to Lender; Right to Cure. If Developer creates a Loan on the Property for construction of the Project, then so long as such Loan remains unsatisfied of record, the following shall apply:

(i) Notices of Default. Whenever the CIC and/or the Housing Authority shall deliver any notice or demand to Developer with respect to any breach or default by Developer under this Agreement which would affect the completion of construction of the Project, the CIC and/or the Housing Authority shall at the same time deliver a copy of such notice or demand to the Limited Partner (as defined in Section 6.5(a) below) and to each Lender who has previously made a written request to the CIC and the Housing Authority for such notice; provided, however, that failure to deliver such notice shall in no way affect the validity of the notice sent to Developer as between the CIC and/or the Housing Authority, as applicable, and Developer, unless cured by a Lender as hereafter provided. Each such Lender shall (insofar as the rights of the CIC and the Housing Authority are concerned) have the right, at its option, within ninety (90) days after the receipt of the notice, to cure or remedy or commence to cure or remedy any such default and to add the cost thereof to the security interest debt and the lien of its security interest. In the event there is more than one (1) such Lender, the right to cure or remedy a breach or default of Developer under this Section 4.6(b)(i) shall be exercised by the Lender first in priority or as the Lenders may otherwise agree among themselves, but there shall be only one (1) exercise of such right to cure and remedy a breach or default of Developer under this Section 4.6(b)(i). The Limited Partner shall have the same rights as any Lender authorized under this Section 4.6(b)(i).

(ii) Rehabilitation of Improvements. Nothing contained in this Agreement shall be deemed to permit or authorize a Lender or a third party procured by Lender or a successful purchaser at a foreclosure sale (such third party or successful purchaser hereinafter referred to as "**Substitute Developer**") to undertake or continue the rehabilitation of the Improvements or completion of the Project (beyond the extent necessary to conserve or protect the improvements or construction already made) on the Property without (A) first having expressly assumed Developer's obligations under this Agreement by written agreement as set forth in Section 4.6(b)(iii) below; (B) with respect to a Substitute Developer only, the submittal of evidence reasonably satisfactory to the CIC and Housing Authority that such Substitute Developer has the financial capacity necessary to perform such obligations; and (C) with respect to a Substitute Developer only, the submittal of evidence reasonably satisfactory to the CIC and Housing Authority that such Substitute Developer has the construction expertise to complete Developer's construction obligations as set forth in this Agreement; provided, however, that CIC and Housing Authority shall approve any Substitute Developer with financial capacity and construction expertise equal to or greater than the original Developer.

(iii) Completion of Improvements. In the event Lender or a Substitute Developer (as applicable, "**New Developer**") desires to assume Developer's obligations hereunder then such written assumption agreement to be executed by CIC, Housing Authority and such New Developer shall contain an agreement to complete the Project in the manner provided in this Agreement and in accordance with the requirements of all applicable funding sources that survive any foreclosure proceeding; provided, however, that (A) such New Developer shall not be bound by the provisions of the Schedule of Performance as to completion of the Project but shall only be required to complete the Project with due diligence, (B) such

New Developer shall only be required to complete the Project in accordance with the Scope of Development; and (C) CIC, Housing Authority and New Developer shall negotiate in good faith such reasonable amendments and reasonable modifications to the Development Budget (including, without limitation, the availability to New Developer any CIC Loan funds not yet disbursed to original Developer) as the parties determine to be reasonably necessary based upon the financial and construction conditions then existing. Any such New Developer properly completing the Project shall be entitled, upon written request made to the CIC, to a Certificate of Completion from the CIC.

(iv) Foreclosure Proceedings. Notwithstanding anything to the contrary contained herein, upon the occurrence of an Event of Default by Developer hereunder, the CIC and the Housing Authority shall take no action to effect a termination of this Agreement without first giving to any Lender which has requested notice thereof and the Limited Partner written notice thereof and a reasonable time thereafter within which either (A) to obtain possession of the Property (including possession by a receiver) or (B) to institute, prosecute and complete foreclosure proceedings with diligence or otherwise acquire the Property with diligence; provided, however, that if such default is reasonably susceptible of being cured at any time, Lender shall commence and diligently prosecute such cure as a condition to the CIC's and the Housing Authority's taking no action as set forth above. A Lender upon acquiring the Property shall be required promptly to cure all other defaults of Developer relating to the Property then reasonably susceptible of being cured by such Mortgagee other than a default by Developer with respect to constructing the Improvements, subject to Sections 4.6(b)(ii) and 4.6(b)(iii) above; provided, however, that: (X) such Lender shall not be obligated to continue such possession or to continue such foreclosure proceedings after such defaults have been cured; (Y) nothing herein contained shall preclude the CIC and/or the Housing Authority, subject to the provisions of this Section 4.6, from exercising any rights or remedies under this Agreement with respect to any other default by Developer during the pendency of such foreclosure proceedings; and (Z) such Lender shall agree with the CIC and the Housing Authority in writing to comply during the period of such forbearance with such of the terms, conditions and covenants of this Agreement as are reasonably susceptible of being complied with by such Lender.

Section 4.7 Right to Cure Mortgage, Deed of Trust or Other Security Interest Default. In the event of Developer's default or breach of a mortgage, deed of trust or other security instrument with respect to the Property prior to the issuance of a Certificate of Completion, and the holder of such security has not exercised its option to complete the development, the CIC and/or Housing Authority may cure the default prior to completion of any foreclosure. In such event, the CIC and/or Housing Authority shall be entitled to reimbursement from Developer of all costs and expenses incurred by the CIC and/or Housing Authority in curing the default. Developer shall promptly provide to the CIC and Housing Authority any and all notices of default or breach of any mortgage, deed of trust or other security instrument with respect to the Property.

ARTICLE V INDEMNIFICATION AND INSURANCE

Section 5.1 Indemnity. Developer shall indemnify, defend and hold harmless the CIC, Housing Authority, the City, and their respective boards, commissions, councils, officers,

employees, and agents (collectively, the “**Indemnitees**”) from and against any and all claims, demands, losses, liabilities, damage, liens, obligations, interest, injuries, penalties, fines, lawsuits or other proceedings, judgments and awards and costs and expenses which arise (including reasonable attorneys’ fees and costs and consultant fees and costs and court costs) of whatever kind or nature, known or unknown, contingent or otherwise, including the reasonable costs to any or all of the Indemnitees of carrying out the terms of any judgment, settlement, consent, decree, stipulated judgment or other partial or complete termination of an action or procedure that requires any or all of the Indemnitees to take any action (collectively, “**Indemnified Claims**”) and in any manner out of (a) any injury to or death of any person or damage to or destruction of any property occurring in, on or about the Property, or any part thereof, whether the person or property of Developer or its Agents, or their invitees, guests or business visitors (collectively, “**Invitees**”), or third persons, resulting from any use or activity by Developer or its Agents under this Agreement, (b) any failure by Developer to faithfully observe or perform any of the terms, covenants or conditions of this Agreement, or (c) the use of the Property or any activities conducted thereon under this Agreement by Developer, its Agents or Invitees. Developer agrees to defend the Indemnitees against any claims that are actually or potentially within the scope of the indemnity provisions of this instrument, even if such claims may be groundless, fraudulent or false. The foregoing indemnity shall survive beyond the termination of this Agreement. Notwithstanding anything contained herein, the foregoing indemnity shall not apply to any loss due to conditions on the Property in existence prior to the Effective Date of this Agreement.

Section 5.2 Developer shall not be responsible for (and such indemnity shall not apply to) any loss due to the sole or active negligence or willful misconduct of the person being indemnified (the CIC, Housing Authority, or the City as the case may be) or its respective agents, servants, employees or contractors.

Section 5.3 Insurance.

(a) Liability and Property Damage Insurance. Developer shall keep in full force and effect a policy or policies of comprehensive general liability and property damage insurance against liability for bodily injury to or death of any person or property damage arising out of an occurrence on or about the Project. The limits of such insurance shall be not less than one million dollars (\$1,000,000) combined single limit for bodily injury and property damage. Housing Authority shall be named as an additional insured and loss payee on an endorsement, such coverage shall be primary and shall not seek contribution from Housing Authority or its Risk Sharing Pool.

(b) Workers’ Compensation Insurance. Developer shall carry or cause to be carried workers’ compensation insurance covering all persons employed in connection with the Project and with respect to whom death, bodily injury, or sickness insurance claims could be asserted against Housing Authority or Developer.

(c) Builders’ Risk Insurance. During the course of construction of the Project, Developer shall provide or cause to be provided a standard builders’ all risk policy in amounts such that the proceeds of such insurance shall not be less than the replacement value of the construction, insuring the interests of Housing Authority, Developer and any contractors and

subcontractors.

(d) Developer shall cause the construction contractors and subcontractors to provide the following insurance coverages:

(i) Comprehensive, broad form general liability insurance, including products and completed operations, in an amount not less than One Million Dollars (\$1,000,000), combined single limit. The completed operations coverage shall be maintained for at least two (2) years following completion of construction.

(ii) Liability insurance for owned, hired and non-owned vehicles, in an amount not less than One Million Dollars (\$1,000,000), combined single limit.

(iii) Workers' compensation, as required by law, and employer's liability in an amount not less than One Million Dollars (\$1,000,000).

(e) General Requirements.

(i) All insurance required under this Agreement shall be effected under valid enforceable policies issued by insurers of recognized responsibility having a rating of at least A-VII in the most current edition of Best's Insurance Reports, or otherwise acceptable to the CIC's Risk Manager.

(ii) All liability policies required hereunder shall be written on an occurrence basis. The required coverage may be provided by a blanket, multi-location policy, if such policy provides a separate aggregate limit per occurrence for the benefit of the Property.

(iii) Should any of the required insurance be provided under form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general aggregates limit shall double the occurrence or claims limits specified.

(iv) Comprehensive general and automobile liability insurance policies shall be endorsed or otherwise provide the following:

(A) Name the CIC, Housing Authority and the City and their commissions, boards, departments, officers, agents and employees, as additional named insureds, as their respective interests may appear hereunder.

(B) All policies shall be endorsed to provide thirty (30) days' advance written notice to CIC's Risk Manager of cancellation, except in the case of cancellation for nonpayment of premium, in which case cancellation shall not take effect until ten (10) days prior written notice has been given. Developer covenants and agrees to give, or cause to be given to, the CIC and Housing Authority reasonable notice in the event that it learns or has any reason to believe that any such policy may be canceled or that the coverage of any such policy may be reduced.

(v) All insurance required by under this Agreement are primary

insurance to any other insurance available to the additional insureds, with respect to any claims arising out of this Agreement, and that insurance applies separately to each insured against whom claim is made or suit is brought. All policies shall include provisions denying such respective insurer the right of subrogation and recovery against the CIC, Housing Authority, and the City. Such policies shall also provide for severability of interests and that an act or omission of one of the named insureds which would void or otherwise reduce coverage shall not reduce or void the coverage as to any insured, and shall afford coverage for all claims based on acts, omissions, injury or damage which occurred or arose (or the onset of which occurred or arose) in whole or in part during the policy period.

(f) Developer shall deliver, or cause to be delivered, to the CIC and Housing Authority certificates of insurance and additional insured endorsements in form reasonably satisfactory to the CIC and Housing Authority, evidencing the coverages required hereunder, on or before the Effective Date of this Agreement (“**Evidence of Insurance**”), and Developer shall provide, or cause to be provided to, the CIC and Housing Authority with Evidence of Insurance thereafter before the expiration dates of expiring policies. In addition, Developer shall deliver, or cause to be delivered, to the CIC and/or Housing Authority complete copies of the relevant policies upon request therefor from the CIC and/or Housing Authority.

ARTICLE VI CONTINUING COVENANTS

Section 6.1 Uses. Developer covenants and agrees for itself, its successors, its assigns and every successor in interest that, during construction of the Project and thereafter, Developer and its successors and assignees shall devote the Property to the uses specified in the Implementation Plan, the approvals applicable to the Project, the Affordable Housing Agreement, the Deed of Trust – CIC Loan and this Agreement for the periods of time specified therein. The foregoing covenant shall run with the Property.

Section 6.2 Obligation to Refrain from Discrimination. Developer covenants by and for itself and any successors in interest that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, sexual orientation, marital status, ancestry or national origin in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property, nor shall Developer itself or any person claiming under or through it establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the Property in violation of any federal, state, or local law or regulation. The foregoing covenants shall run with the Property.

Section 6.3 Form of Nondiscrimination and Nonsegregation Clauses. Developer shall refrain from restricting the rental, sale or lease of the Property on the basis of race, color, creed, religion, sex, sexual orientation, marital status, ancestry or national origin of any person or in violation of any federal, state, or local law or regulation. All such deeds, leases or contracts shall contain or be subject to substantially the following nondiscrimination or nonsegregation clauses, as such clauses may be amended by applicable law following the effective date of this Agreement:

(a) In Deeds:

“(1) Grantee herein covenants by and for itself, its successors and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) and (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955 and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the property herein conveyed, nor shall the grantee or any person claiming under or through the grantee, establish or permit any practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the property herein conveyed. The foregoing covenant shall run with the land.

(2) Notwithstanding paragraph (1), with respect to familial status, paragraph (1) shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in paragraph (1) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to paragraph (1).”

(b) In Leases:

“(1) Lessee herein covenants by and for itself, its successors and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) and (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955 and Section 12955.2 of the Government Code in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the premises herein leased nor shall the lessee or any person claiming under or through the lessee, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sublessees, subtenants, or vendees in the premises herein leased.

(2) Notwithstanding paragraph (1), with respect to familial status, paragraph (1) shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in paragraph (1) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to paragraph (1).”

(c) In Contracts:

“(1) There shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) and (d) of Section

12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955 and Section 12955.2 of the Government Code in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the property nor shall the transferee or any person claiming under or through the transferee establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the land.

(2) Notwithstanding paragraph (1), with respect to familial status, paragraph (1) shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in paragraph (1) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to paragraph (1)."

Section 6.4 Effect and Duration of Covenants.

(a) Duration of Covenants. Except as otherwise provided in the documents referenced in Section 6.1 above, the covenants contained in this Article VI shall remain in effect for fifty-nine (59) years, except that the covenants against discrimination shall remain in effect in perpetuity. The covenants established in this Article VI shall, without regard to technical classification and designation, be binding for the benefit and in favor of the CIC, its successors and assigns, Housing Authority, the City and any successor in interest to the Property or any part thereof.

(b) CIC Beneficiary. The CIC and its governmental successors and assigns is deemed the beneficiary of the terms and provisions of this Agreement and of the covenants running with the Property for and in its own right and for the purposes of protecting the interests of the community and other parties, public or private, in whose favor and for whose benefit this Agreement and the covenants running with the Property have been provided. This Agreement and the covenants shall run in favor of the CIC and its governmental successors and assigns without regard to whether the CIC or its governmental successors and assigns has an interest in the Property. The CIC and its governmental successors and assigns shall have the right, if this Agreement or the covenants are breached, to exercise all rights and remedies and to maintain any actions or suits at law or in equity or other proper proceedings to enforce the curing of such breaches to which it or any other beneficiaries of this Agreement and the covenants may be entitled.

Section 6.5 Transfer; Purchase Option.

(a) The qualifications and identity of Developer are of particular concern to the CIC and Housing Authority, and it is because of these qualifications and identity that the CIC and Housing Authority have entered into this Agreement with Developer. No voluntary successor in interest to Developer shall acquire any rights or powers under this Agreement, except as expressly set forth herein.

(b) Prior to issuance of a Certificate of Completion pursuant to Section 3.14 above, except as provided in Section 4.6(b) above, Developer shall not sell, convey or otherwise transfer its interest in the Property and/or assign its interest in this Agreement without the consent of the CIC and Housing Authority, which may be granted or denied in the CIC's or Housing Authority's sole discretion; provided, however, the CIC's and Housing Authority's prior written consent shall not be required for a transfer to the Partnership so long as the Partnership has agreed to provide a purchase option and right of first refusal to the Housing Authority to allow the Housing Authority to purchase the Property commencing after year 12 of the Compliance Period (as defined below) and terminating at the end of the Compliance Period. For purposes herein, the "**Compliance Period**" shall mean the fifteen (15)-year compliance period for the low-income housing tax credit for the Project, as determined under Section 42(i)(1) of the Internal Revenue Code of 1986, as amended. Any attempt by Developer to sell, convey or otherwise transfer its interest in the Property or assign or transfer this Agreement other than to the Partnership in violation of the immediately preceding sentence shall be null and void and cause the immediate termination and revocation of this Agreement.

ARTICLE VII REMEDIES

Section 7.1 Application of Remedies. The following shall govern the Parties' remedies for default or failure of this Agreement.

Section 7.2 No Fault. If despite good faith efforts by Developer, Commencement of Construction has not occurred by February 1, 2013 (a) due to Unavoidable Delay or (b) if Developer is unable to obtain commitments for sufficient funding to complete the Project within eighteen (18) months after the Effective Date of this Agreement, at the election of any Party hereto, this Agreement may be terminated by written notice to the other parties. Thereafter, none of the parties shall have any rights against or liability to the other parties except as set forth in Sections 7.5, 7.6, 7.7 and 7.8 below, and any payment, indemnity, insurance, and legal fee obligations of a party hereto contained herein, which shall survive any such termination.

Section 7.3 Fault of CIC. If the CIC shall be in default under this Agreement, Developer shall first notify the CIC in writing of its purported breach or failure, giving the CIC thirty (30) days from receipt of such notice to cure such breach or failure. In the event the CIC does not cure the noticed default within thirty (30) days (or with respect to a default that cannot reasonably be cured within thirty (30) days, the CIC does not commence to cure such default within such (30) thirty day period or does not thereafter diligently pursue such cure to completion), Developer shall be entitled to any rights afforded to Developer in law or in equity, including without limitation, enforcement of obligations through specific performance or payment of damages.

Section 7.4 Fault of Developer. If Developer shall be in default under this Agreement, the CIC shall first notify Developer in writing of its purported breach or failure giving Developer thirty (30) days from receipt of such notice to cure such breach or failure. In the event Developer does not cure the noticed default within thirty (30) days (or with respect to a default that cannot reasonably be cured within thirty (30) days, Developer does not commence to cure such default within such (30) thirty day period or does not thereafter diligently pursue

such cure to completion), the CIC thereafter shall be entitled to any rights afforded the CIC in law or in equity by taking any or all of the following remedies: (a) terminating in writing this entire Agreement and the CIC's obligations under this Agreement; (b) prosecuting an action for damages; (c) prosecuting an action for specific performance; (d) the remedies specified in Sections 7.5 and 7.8 below; and (e) any other remedies specified under this Agreement.

Section 7.5 Plans, Data and Approvals. If this Agreement is terminated pursuant to Sections 7.2 or 7.4 above, Developer shall grant to CIC and Housing Authority, the limited right and license to use the Plans exclusively for the purposes of constructing the Project. CIC and Housing Authority acknowledge and agree that: (a) CIC or Housing Authority shall only be entitled to use such Plans in constructing the Project on the Property and at no other location; (b) the Plans may not be sold or otherwise transferred or assigned, except to the CIC and Housing Authority or to a purchaser of the Property, but only after such purchaser signs a written agreement acknowledging and agreeing to the terms and conditions of the license and provides Developer with an indemnity and release substantially similar to the applicable provisions set forth below; (c) the name Resources for Community Development, RCD or any variation thereof, shall not be used or referenced in connection with the construction or leasing of any residential units constructed based upon the Architectural Plans; (d) the Plans were prepared for Developer's purposes, and prior to its use of the Plans, CIC or Housing Authority, as applicable, shall have its own architects and structural engineers certify that the Plans are free from errors, omissions or other defects and shall make such revisions to the Plans to enable CIC's or Housing Authority's, as applicable, architect and structural engineer to make such certification; and (e) neither CIC, Housing Authority, nor their successors and assigns shall be entitled to enforce against Developer or any other third parties any rights, claims (including copyright infringement claims) or demands relating to or in any way connected with state or federal copyright protection of the Plans, all such copyrights and protections being fully retained by Developer, as its interests may appear.

Section 7.6 Existing Contracts. If this Agreement is terminated pursuant to Sections 7.2 or 7.4 above, the CIC shall be obligated to pay all reasonable fees owed and expenses incurred prior to the termination under the necessary and reasonable contracts entered into by Developer for construction of the Project, but any such payment shall be made solely from the proceeds of the Bonds and in an amount not in excess of the maximum principal amount of the CIC Loan.

Section 7.7 Loan Assignment. If CIC or Housing Authority terminates this Agreement pursuant to Sections 7.2 and 7.4 above, Developer agrees to assign the CIC Loan to another qualified developer the CIC may select, in its sole discretion, to develop and construct the Project and provided such developer assumes in writing the CIC Loan, then Developer shall be relieved of its obligation to repay the CIC Loan.

Section 7.8 Fraud. Notwithstanding anything to the contrary in this Agreement, including, without limitation relief from repayment pursuant to Section 7.7 above, no provision of this Agreement shall in any way affect any rights any Party to this Agreement may have to recover any funds, damages or costs incurred as a result of fraud or willful misconduct.

ARTICLE VIII
GENERAL PROVISIONS

Section 8.1 Notices, Demands and Communications. Formal notices, demands, and communications between the CIC, Housing Authority, and Developer shall be sufficiently given if, and shall not be deemed given unless, dispatched by certified mail, reputable overnight delivery service, facsimile transmission or delivered personally, to the principal offices of the CIC, Housing Authority, and Developer as follows:

CIC:	Community Improvement Commission of the City of Alameda 2263 Santa Clara Avenue, Room 320 Alameda, CA 94501 Attention: Acting Executive Director Telephone: (510) 747-4700 Facsimile: (510) 747-4704
Housing Authority:	Housing Authority of the City of Alameda 701 Atlantic Avenue Alameda, CA 94501 Attention: Executive Director Telephone: (510) 747-4320 Facsimile: (510) 522-7848
with copy to:	City of Alameda 2263 Santa Clara Avenue, Room 280 Alameda, CA 94501 Attention: City Attorney Telephone: (510) 747-4750 Facsimile: (510) 747-4767
Developer:	Resources for Community Development. 2220 Oxford Street Berkeley, CA 94704 Attention: Lisa Motoyama Telephone: (510) 841-4410 Facsimile: (510) 548-3502

Such written notices, demands and communications may be sent in the same manner to such other addresses as the affected party may from time to time designate by notice given as provided in this Section 8.1.

Section 8.2 Estoppel Certificate. Each party hereto shall, at any time, and from time to time, within fifteen (15) days after receipt of written notice from another party hereto, execute and deliver to such party a written statement certifying that, to the knowledge of the certifying party, (a) this Agreement is in full force and effect and a binding obligation of the parties (if such be the case); (b) this Agreement has not been amended or modified either orally

or in writing, and if so amended, identifying the amendments; and (c) the requesting party is not in default in the performance of its obligations under the this Agreement, or if in default, to describe therein the nature and amount of any such defaults.

Section 8.3 Conflict of Interests. No member, official or employee of the CIC or Housing Authority shall make any decision relating to the Agreement which affects his or her personal interests or the interests of any corporation, partnership or association in which he or she is directly or indirectly interested.

Section 8.4 Non-Liability of Officials, Employees and Agents. Notwithstanding anything to the contrary in this Agreement, no elective or appointive board, commission, member, officer, employee or agent of the City, the CIC or the Housing Authority shall be personally liable to Developer, its successors and assigns, in the event of any default or breach by the CIC and/or Housing Authority or for any obligation of the CIC and/or Housing Authority under this Agreement, nor shall any officer, director, shareholder, partner or employee of Developer be personally liable to the City, the CIC or the Housing Authority, their successors or assigns, in the event of any default or breach by Developer or for any obligation of Developer under this Agreement.

Section 8.5 Enforced Delay. In addition to specific provisions of this Agreement, performance by Developer shall not be deemed to be in default where delays or defaults are due to war; terrorism; insurrection; strikes; lock-outs; riots; floods; earthquakes; fires; quarantine restrictions; freight embargoes; shortage of materials; inclement weather; lack of transportation; court order; actions or inaction by the City, or any other governmental agency other than the CIC or Housing Authority; or any other similar causes (other than lack of funds of Developer or Developer's inability to finance the construction of the Project or any portion thereof) beyond the control or without the fault Developer. Developer shall notify the CIC and Housing Authority within ten (10) days of the commencement of the cause of any such delay. Such notice shall specify the cause of such delay, the reason for the applicability of this section and requested length of such extension which shall be consistent with the source of such delay. Failure to give notice under this Section shall not be deemed a waiver of any right to claim enforced delay. Times of performance under this Agreement may also be extended by written agreement of the CIC, Housing Authority, and Developer.

Section 8.6 Inspection of Books and Records. The CIC and/or Housing Authority shall have the right at all reasonable times, upon twenty-four (24) hours written notice, to inspect, on a confidential basis the books, records and all other documentation of Developer pertaining to its obligations under this Agreement.

Section 8.7 Approval By Executive Director or Chief Executive Officer. Where approval or consent of the CIC or Housing Authority is required under this Agreement, such approval or consent may be given by the CIC Executive Director or Housing Authority's Chief Executive Officer (or Housing Authority's Executive Director, as authorized), respectively.

Section 8.8 Brokerage Commissions. None of the parties hereto shall be liable for any real estate commissions or brokerage fees which may arise as a result of this Agreement. The Parties hereto each represent that it has not engaged any broker, agent or finder in connection

with this transaction. Each Party agrees to indemnify, defend and hold the other Parties harmless from any claims and liability, including reasonable attorneys' fees and court costs, in connection with a claim by any person or entity for a real estate commission or brokerage fee based on contacts between the claimant and the indemnifying Party.

Section 8.9 Rights and Remedies Cumulative. Except as otherwise expressly stated in this Agreement, the rights and remedies of the Parties are cumulative, and the exercise or failure to exercise one or more of such rights or remedies by any Party shall not preclude the exercise by it, at the same time or different times, of any right or remedy for the same default or any other default by another Party.

Section 8.10 Applicable Law. This Agreement shall be construed and governed in accordance with the laws of the State of California, applicable to contracts made and performed in California.

Section 8.11 Severability. If any term, provision, covenant or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions shall continue in full force and effect unless the rights and obligations of the Parties have been materially altered or abridged by such invalidation, voiding or unenforceability.

Section 8.12 Binding Upon Successors. This Agreement shall be binding upon and inure to the benefit of the heirs, administrators, executors, successors in interest and assigns of each of the Parties; provided, however, that there shall be no transfer of any interest by any of the Parties except pursuant to the terms of this Agreement. Any reference in this Agreement to a specifically named Party shall be deemed to apply to any successor, heir, administrator, executor or assign of such Party who has acquired an interest in compliance with the terms of this Agreement, or under law.

Section 8.13 Parties Not Co-Venturers. Nothing in this Agreement is intended to or does establish the Parties as partners, co-venturers, or principal and agent with one another.

Section 8.14 Non-Discrimination. Developer shall not discriminate in the employment of persons because of race, color, creed, religion, age, sex, sexual orientation, marital status, sexual orientation, physical or mental disability or medical condition, national origin or ancestry of such person. Developer shall require its Agents to ensure that all consultant contracts and construction contracts for the Project, contain this provision against discrimination or provide that its consultants and contractors shall comply with all applicable laws which would include laws prohibiting discrimination on these bases.

Section 8.15 Waiver. No waiver by any party of any of the provisions of this Agreement shall be effective unless in writing and signed by the Party granting the waiver, and only to the extent expressly provided in such written waiver.

Section 8.16 Attorneys' Fees. If any Party institutes any action or proceeding in court or before an arbitrator to enforce any provision hereof or for damages by reason of an alleged breach of any provision of this Agreement, the prevailing Party shall be entitled to receive from the other Party(ies) court or arbitration costs or expenses incurred by the prevailing Party

including, without limitation, expert witness fees, document copying expenses, exhibit preparation costs, carrier expenses and postage and communication expenses, and such amount as the court or arbitrator may judge to be reasonable attorneys' fees for the services rendered to the prevailing Party in such action or proceeding.

Section 8.17 Time. Time is of the essence of this Agreement.

Section 8.18 Title of Articles and Sections. Any titles of the articles, sections or subsections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any part of its provision.

Section 8.19 City as Beneficiary. The City is an intended third party beneficiary of this Agreement.

Section 8.20 Exhibits. Each of the exhibits referenced in this Agreement is attached hereto and incorporated herein.

Section 8.21 Entire Understanding of the Parties. This Agreement and all attached exhibits to the foregoing documents constitute the entire understanding and agreement of the Parties. This Agreement shall not be modified except by written instrument executed by an officer or other authorized representative of all Parties hereto.

Section 8.22 Counterparts. This Agreement may be executed in multiple counterpart copies, any one of which when duly executed with all of the formalities hereof, shall be fully binding and effective as the original of this Agreement.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day and year first above written.

CIC:

Community Improvement Commission of the City of Alameda,
a public body, corporate and politic

By: _____
Lisa Goldman
Acting Executive Director

Approved as to form:

By: _____
Donna Mooney
Acting General Counsel

Recommended for Approval:

By: _____
Michael T. Pucci
Executive Director
Housing Authority of the City of Alameda

HOUSING AUTHORITY:

Housing Authority of the City of Alameda,
a public body corporate and politic

By: _____
Lisa Goldman
Acting Chief Executive Officer

Approved as to form

By: _____
Donna Mooney
Acting General Counsel

DEVELOPER:

Resources for Community Development,
a California nonprofit public benefit corporation

By: _____
Name: _____
Title: _____

Exhibit A

Legal Description of the Property

(Attached)

LEGAL DESCRIPTION

Real property in the City of Alameda, County of Alameda, State of California, described as follows:

BEGINNING AT THE INTERSECTION OF THE SOUTHERN LINE OF CENTRAL AVENUE WITH THE EASTERN LINE OF PARK AVENUE, AS SAID AVENUES ARE SHOWN ON THE MAP HEREINAFTER REFERRED TO; RUNNING THENCE EASTERLY ALONG SAID LINE OF CENTRAL AVENUE, 182 FEET, 10 INCHES; THENCE SOUTHERLY AND PARALLEL WITH REGENT STREET, 144 FEET, 2 INCHES, MORE OR LESS, TO A POINT ON A LINE DRAWN AT RIGHT ANGLES TO SAID LINE OF PARK AVENUE AND DISTANT 6 FEET SOUTHERLY FROM THE SOUTHERN LINE OF LOT NO. 33 HEREINAFTER REFERRED TO; THENCE AT RIGHT ANGLES WESTERLY 183 FEET, 4-1/2 INCHES, MORE OR LESS, TO THE EASTERN LINE OF PARK AVENUE; THENCE NORTHERLY ALONG SAID LAST NAMED LINE 125 FEET, 9-1/2 INCHES TO THE POINT OF BEGINNING.

BEING LOT 33 AND THE NORTHERN 6 FEET OF LOT 34, EXCEPTING THE EASTERN 10 FEET OF SAID LOTS, MAP OF ALAMEDA PARK HOMESTEAD, FILED MAY 30, 1874, ALAMEDA COUNTY RECORDS.

EXCEPTING THEREFROM THAT PORTION THEREOF LYING WITHIN THE LINES OF CENTRAL AVENUE, AS SAID AVENUE NOW EXISTS.

EXCEPTING ALL OIL, GAS AND OTHER HYDROCARBONS, WATER (AND STEAM) AND ALL OTHER MINERALS, WHETHER SIMILAR TO THOSE HEREIN SPECIFIED OR NOT, WITHIN OR THAT MAY BE PRODUCED FROM SAID PARCEL; PROVIDED HOWEVER, THAT THE SURFACE OF SAID PARCEL SHALL NEVER BE USED FOR THE EXPLORATION, DEVELOPMENT, EXTRACTION, REMOVAL OR STORAGE OF ANY THEREOF.

ALSO EXCEPTING THEREFROM THE SOLE AND EXCLUSIVE RIGHT, FROM TIME TO TIME, TO DRILL AND MAINTAIN WELLS OR OTHER WORKS INTO OR THROUGH SAID PARCEL BELOW A DEPTH OF 500 FEET AND TO PRODUCE, INJECT, STORE AND REMOVE FROM AND THROUGH SUCH WELLS OR WORKS, OIL, GAS, WATER AND OTHER SUBSTANCES OF WHATEVER NATURE, INCLUDING THE RIGHT TO PERFORM ANY AND ALL OPERATIONS DEEMED BY GRANTOR NECESSARY OR CONVENIENT FOR THE EXERCISE OF SUCH RIGHTS, AS RESERVED IN THE DEED FROM STANDARD OIL COMPANY OF CALIFORNIA TO STAHL-WOOLRIDGE CONSTRUCTION COMPANY, DATED MARCH 9, 1971, RECORDED MAY 25, 1971 IN REEL 2858, IMAGE 807, OFFICIAL RECORDS OF ALAMEDA COUNTY.

APN: 070-0186-001

Exhibit B

Schedule of Performance

(Attached)

Project Timeline – 9%

Timing	Project Approvals	Financing	Design & Construction
March 2011	Community and Tenant Meetings CEQA and NEPA Clearance Planning Board Approval OPA approval	TCAC Application Submitted	Initiate Design Development (DD) following Planning Board Approval
April 2011			Initiate Preparation of Construction Drawings (CD) following Completion of DD
June 2011		TCAC 9% Award	Completion of 50% CDs
August 2011	Building Permit Set Submittal		Completion of 90% CDs (Permit Set Submittal)
October 2011	Building Permit Approval	Construction Loan and Tax Credit Equity Investor Closing	Construction Start
October 2012			Construction Completion
January 2013			100% Leased

Exhibit C

Scope of Development

(Attached)

Exhibit C – Scope of Development

Main Building

The main residential building will undergo a comprehensive renovation. The building façade will be replaced and all new windows will be installed. The interior corridors will be renovated and new circulation systems (both stairs and elevator) will be installed. To address life safety concerns, the structure will be seismically upgraded and a fire alarm and fire sprinkler system will be added. In addition, a new solar hot water system will be incorporated into the building to reduce energy consumption.

The 62 residential units in the main building (61 studios and 1 manager's unit) will receive a much needed makeover. All of the following components will be replaced: plumbing and electrical fixtures, flooring, blinds, appliances, cabinets, countertops, doors and hardware. In addition, 23 of the units will be made fully accessible.

Office, Community Building and Outdoor Space

The Project will include the construction of two new structures: an office (for both the onsite manager and a services coordinator) and a community building (with a kitchen and computer lab) exclusively for resident use. The office will be built at the front of the site, creating a strong architectural presence along Central Avenue. The community building will be set behind the office, with the two structures separated by a trellis covered courtyard. Beyond the community building will be an outdoor area with raised planters for a community garden. An existing auxiliary building will be demolished to accommodate the community garden and additional parking.

Exhibit D

Certificate of Completion

CERTIFICATE OF COMPLETION

The Community Improvement Commission of the City of Alameda, a public body corporate and politic (the “**CIC**”) and the Housing Authority of the City of Alameda, a public body, corporate and politic (the “**Housing Authority**”), certify that the construction of the Project (as defined in the OPA (as defined below)) in accordance with the provisions of that certain OPA (as defined below) has been completed. The OPA relates to certain real property located in the City of Alameda, the County of Alameda and the State of California (the “**Property**”). The Property is more particularly described in the OPA.

The CIC, the Housing Authority, and Resources for Community Development, a California nonprofit public benefit corporation (“**Developer**”) entered into that certain Owner Participation Agreement (2428 Central Avenue), dated as of _____, 2011 (the “**OPA**”). Pursuant to that certain Assignment and Assumption Agreement (Owner Participation Agreement) (2428 Central Avenue) dated as of _____, Developer assigned and delegated to _____, a _____ (the “_____, as Assignee”), and the Assignee assumed and agreed to perform, all of Developer’s rights, obligations, and agreements under the OPA.

This Certificate of Completion shall be a conclusive determination of satisfactory completion of construction of the Project (as defined in the OPA) required by the OPA.

[Remainder of page intentionally blank; signatures follow.]

CIC:

Community Improvement Commission of the City of Alameda,
a public body, corporate and politic

By: _____
Name: _____
Executive Director

Approved as to form:

By: _____
Farimah Faiz
Assistant General Counsel

Recommended for Approval:

By: _____
Michael T. Pucci
Executive Director
Housing Authority of the City of Alameda

Housing Authority:

Housing Authority of the City of Alameda,
a public body, corporate and politic

By: _____
Michael T. Pucci
Executive Director

Approved as to form:

By: _____
Farimah Faiz
Assistant General Counsel

Exhibit E

Form of Promissory Note – CIC Loan

(Attached)

PROMISSORY NOTE – CIC LOAN
(2428 Central Avenue)

\$1,000,000

Alameda, California

_____, 2011

FOR VALUE RECEIVED, the undersigned, RESOURCES FOR COMMUNITY DEVELOPMENT, a California nonprofit public benefit corporation (“**Maker**”, promises to pay to the COMMUNITY IMPROVEMENT COMMISSION OF THE CITY OF ALAMEDA, a public body corporate and politic (the “**Holder**”), or order at 2263 Santa Clara Avenue, Room 230, Alameda, California 94501 or at such other place as Holder may direct from time to time in writing, the principal sum of ONE MILLION DOLLARS (\$1,000,000) (“**CIC Loan**”), together with other charges as set forth herein below. All sums payable hereunder shall be payable in lawful money of the United States of America.

1. Owner Participation Agreement. This promissory Note (“**Promissory Note**”) is made and delivered pursuant to and in implementation of that certain Owner Participation Agreement (2428 Central Avenue) dated as of _____, 2011, by and between the Holder, the Housing Authority of the City of Alameda, a public body, corporate and politic, and the Maker (the “**Agreement**”). The terms and conditions of such Agreement, which, among other things, allow for acceleration of this Promissory Note upon the occurrence of certain events of default, are hereby incorporated by reference. Capitalized terms not defined herein are as defined in the Agreement. In the event there is any conflict between the terms of this Promissory Note and the terms of the Agreement, the terms of the Agreement shall govern.
2. Terms of Payment.
 - a. The term of this Promissory Note is from the date of execution by Maker until _____, 20__.
 - b. The total amount due on the CIC Loan shall equal the total sum of payments as if the beginning balance were to be amortized at zero percent (0%) interest for fifty-nine (59) years.
 - c. Payments shall be deferred from the date of execution of this Promissory Note until _____, 20__.
 - d. This Promissory Note shall be due and payable upon the sale, conveyance, assignment, hypothecation, refinance without prior written consent of the CIC, or transfer to any other party(ies) (other than the Permitted Transferee (as defined in the Agreement)) of any interest of Maker in the Property described and defined in the

Deed of Trust executed this date by Maker and described below. With the prior written consent of the CIC, this Promissory Note may be assumed for an assumption fee equal to time and expenses of CIC staff needed to process such a request.

3. Prepayment. Maker may prepay all or any part of the outstanding principal balance of this Promissory Note at any time, without penalty. Within thirty (30) days following such prepayment, in full, Holder shall return this Promissory Note to Maker marked "cancelled."
4. Deed of Trust. The CIC Loan shall be secured by a Deed of Trust dated concurrently herewith, encumbering the Property, recorded in the Alameda County Recorder's Office.
5. Default. Maker will be in default under this Promissory Note upon the occurrence of any one or more of the following events (each, an "**Event of Default**"):
 - a. Maker fails to make any payment of principal under this Promissory Note within ten (10) days after the date when due; or
 - b. Maker fails to comply with any provision contained in this Promissory Note or the Agreement, and does not cure that failure within thirty (30) days after written notice from Holder, or if such failure is not of a nature which can be cured within such thirty (30) day period, Maker does not within such thirty (30) day period commence substantial efforts to cure such failure, or thereafter does not within a reasonable time prosecute to completion with diligence and continuity the curing of such failure ; or
 - c. An event of default under the Agreement occurs subject to Section 7.8 of the Agreement.

Subject to Sections 7.7 and 7.8 of the Agreement, if an Event of Default occurs, the Holder may exercise any right or remedy which it has under this Promissory Note or the Agreement, or which is otherwise available at law or in equity or by statute, and all of Holder's rights and remedies shall be cumulative. Upon the occurrence of any Event of Default, Holder's obligation to lend under the Agreement shall automatically terminate. Upon the occurrence of any Event of Default all of Maker's obligations under this Promissory Note and the Agreement may become immediately due and payable without notice of default, presentment or demand for payment, protest or notice of nonpayment or dishonor, or other notices or demands of any kind or character, all at Holder's option, exercisable in its sole discretion. Holder's failure to exercise such option shall not constitute a waiver of such option with respect to any subsequent event. Holder's failure in the exercise of any other right or remedy hereunder or under any agreement or other instrument which secures the indebtedness or is related thereto shall not affect any right or remedy and no single or partial exercise of any such right or remedy shall preclude any further exercise thereof.

6. Waivers. Maker expressly waives: (a) any defense based upon any legal disability or other defense of Maker, or other person, or by reason of the cessation or limitation of the liability of Maker from any cause other than full payment and performance of those obligations of Maker which are provided for hereunder; (b) any defense based upon any lack of authority of the members, officers, directors, partners or agents acting or purporting to act on behalf of Maker or any member of Maker or any defect in the formation of Maker or any member of Maker; (c) any defense based upon the application by Maker of the proceeds of this Promissory Note for purposes other than the purposes represented by Maker to Holder or intended or understood by Holder or Maker; (d) any defense based upon Holder's election of any remedy against Maker; (e) any defense based upon Holder's election, in any proceeding instituted under the Federal Bankruptcy Code, of the application of Section 1111(b)(2) of the Federal Bankruptcy Code or any successor statute; (f) any defense based upon any borrowing or any grant of a security interest under Section 364 of the Federal Bankruptcy Code; (g) any right of subrogation, any right to enforce any remedy which Holder may have against Maker and any right to participate in, or benefit from, any security for this Promissory Note or the other documents now or hereafter held by Holder; and (h) presentment, demand, protest and all notices other than any notice expressly provided for in this Promissory Note and/or the Agreement.
7. Costs. Upon the occurrence of an Event of Default, Maker promises to pay all costs, expenses and attorneys' fees incurred by the Holder in connection with the collection or enforcement of this Promissory Note or any part of it, whether or not suit is filed, including but not limited to, all costs, expenses and attorneys' fees incurred by the Holder in connection with any insolvency, bankruptcy, reorganization, arrangement or similar proceedings involving Maker. As used herein, the term "attorneys' fees" means the full costs of legal services performed in connection with the matters involved, calculated on the basis of usual fees charged by an attorney performing those services, and not limited to "reasonable attorneys' fees" as defined by any statute or rule of any court in which an action hereunder may be brought.
8. Limited Recourse. Notwithstanding anything to the contrary in this Promissory Note, there shall be no personal liability of Maker, and the liability of Maker shall be limited to the property securing the Promissory Note, hereinafter referred to as the "Property". Holder shall, however, be entitled to institute an action, suit, claim or demand against, and to recover a judgment against Maker, but only for any deficiency and the cost of collections, and only to the extent that such deficiency results directly from: (a) intentional or willful fraud or misrepresentation by Maker in connection with the representations and warranties provided by Maker; (b) the retention of any rents from the Property to Maker after an event of default has occurred and the cure period of such an event has expired (to the full extent of such rents retained and collected by Maker after the occurrence of an event of default after the cure period); (c) the willful removal or disposal by Maker of personal property or fixtures of the Property constituting a significant value, except for that which occurs through reasonable maintenance and repair; (d) the retention or misapplication by

Maker of any insurance proceeds or any condemnation award with respect to the Property to the extent of such insurance proceeds and/or condemnation award; or (e) the intentional or negligent waste of any portion of the Property by Maker.

9. Amendments and Modifications. This Promissory Note may not be changed orally, and may be amended only by an agreement in writing, signed by the party against whom enforcement of any waiver, change, modification or dispute is sought.
10. Governing Law. This Promissory Note shall be construed and enforced in accordance with the laws of the State of California.
11. Successors. The terms "Maker" and "Holder" shall be construed to include the parties' respective successors and assigns.
12. Severability. If any provision of this Note shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby.

IN WITNESS WHEREOF, the undersigned has executed this Promissory Note as of the date first set above. Maker has delivered this Promissory Note as of the day and year first set forth above.

MAKER:

Resources for Community Development,
a California nonprofit public benefit corporation

By: _____
Name: _____
Title: _____

Exhibit F

Development Budget

(Attached)

Alameda Islander - Sources and Uses Budget

SOURCES OF FUNDS

TOTAL

Perm Loan - First	250,000
City of Alameda Federal HOME Funds	1,300,000
Alameda Community Improvement Commission Funds	9,000,000
Deferred fee payable in 10 years	142,039
GP Equity	17,206
Investor Capital Contributions	6,892,805

TOTAL PERMANENT SOURCES

17,602,051

Construction Loan	5,905,770
-------------------	-----------

USES OF FUNDS

TOTAL COST

LAND COST/ACQUISITION

Purchase of land/building = at appraised value	6,300,000
Additional acquisition costs above appraised value	1,700,000
Legal & Closing Costs	75,000
Total Acquisition Cost	8,075,000

REHABILITATION

Site Work	263,280
Structures	4,204,636
General Requirements	211,731
Contractor Overhead	185,770
Contractor Profit	144,900
Contractor Insurance & Bond	95,598
Total Rehabilitation Cost	5,105,915

ARCHITECTURAL FEES

Design	300,938
Supervision	100,313
Total Architectural Costs	401,250
Survey and Engineering, incl testing	25,000

CONSTR. INTEREST & FEES

Const. Loan Interest	314,482
Construction loan fee and expenses (1% + \$35k)	94,058
Taxes	55,000
Insurance	25,000
Title and Recording	20,000
Total Construction Interest and Fees	508,540

PERMANENT FINANCING

Loan Fees @1%	2,500
Title and Recording	15,000
legal	5,000
Total Permanent Financing Costs	22,500

LEGAL FEES

Lender Legal Costs Paid by Applicant	0
Other - Owner Legal	40,000
Total Attorney Costs	40,000

RESERVES

Capitalized Operating Reserve - 6 mo for County	222,070
Total Reserve Costs	222,070

Total Appraisal Costs	15,000
Total Construction Contingency Costs (15%)	765,887
<i>OTHER</i>	
Tax Credit App./Alloc./Monitoring fees	51,849
Local Development Impact Fees	0
Permit Processing Fees and utility hookups	75,000
Market Study	9,000
Marketing & Lease Up	32,000
Environmental	5,000
Construction Management and Security	75,000
Furnishings	40,000
RELOCATION	742,000
Soft Cost Contingency	100,000
Total Other Costs	1,129,849
Total Project Cost	16,311,011
<i>DEVELOPER COSTS</i>	
Developer Overhead/Profit	1,204,039
Total Developer Costs	1,204,039
TOTAL PROJECT COST	17,515,051
<i>Syndication Costs</i>	
Legal - Syndication	35,000
Audit	17,000
Consultant - Syndication	35,000
Total Syndication Costs	87,000
TOTAL PROJECT COSTS INCL. SYNDICATION	17,602,051

Exhibit G

Form of Affordable Housing Agreement

(Attached)

**Recording requested by
And when recorded mail to:**

Community Improvement Commission
of the City of Alameda
c/o Housing Authority
701 Atlantic Avenue
Alameda, CA 94501
Attention: Executive Director

Exempt from recording fees pursuant to
Cal. Gov't Code § 27383

APN: _____

AFFORDABLE HOUSING AGREEMENT
(Rental Units with Commission Assistance)

This Affordable Housing Agreement ("**Agreement**") dated _____ ("**Effective Date**"), is entered into between the **COMMUNITY IMPROVEMENT COMMISSION OF THE CITY OF ALAMEDA**, a public body, corporate and politic, exercising governmental functions and powers and organized and existing under the Community Redevelopment Law of the State of California (Health & Safety Code Section 33000 *et seq.*) ("**Commission**") and _____, a [insert type of entity] ("**Participant**").

RECITALS

The following recitals are a substantive part of this Agreement.

A. Participant is the owner of that certain real property located in the City of Alameda, County of Alameda, State of California, more particularly described in Exhibit A attached hereto ("**Property**").

B. In accordance with the Community Redevelopment Law of the State of California (Health and Safety Code Section 33000 *et seq.*, as it may be amended from time to time) ("**Redevelopment Law**"), the City Council of the City of Alameda (the "**City**") approved and adopted (i) on June 18, 1991, by Ordinance No. 2559, the Community Improvement Plan (as amended, the "**BWIP Community Improvement Plan**") for the Business and Waterfront Improvement Project (the "**BWIP Project**"), and (ii) on July 5, 1983, by Ordinance No. 2141, the Community Improvement Plan (as amended, and together with the BWIP Community Improvement Plan, the "**Merged Areas Community Improvement Plans**") for the West End Community Improvement Project (together with the BWIP Project, the "**Merged Projects**").

C. The property subject to the Merged Areas Community Improvement Plans is referred to herein as the "**Project Area**".

D. On June 15, 2010, the CIC approved and adopted by Resolution No. 10-167 that certain "Implementation Plan, Fiscal Years 2009/10-2013/14, Alameda Redevelopment Project Areas: Business and Waterfront Improvement Project & West End Community Improvement Project", dated March 2010, prepared by Keyser Marston Associates, Inc. (the "**Implementation Plan**"). The Implementation Plan was prepared in accordance with the requirements of Section 33490 of Redevelopment Law.

E. The Implementation Plan identified specific affordable housing projects to be developed over the next five (5) years in the Project Area. The list of specific projects includes acquisition and rehabilitation of existing buildings for very-low and low income affordable housing (the "**Project**"), on certain real property located in the City of Alameda, County of Alameda, State of California, commonly known as 2428 Central Avenue (also known as the Alameda Islander Motel), more particularly described in Exhibit A hereto and incorporated into this Agreement by reference (the "**Property**"), which the Implementation Plan identified as located within the Project Area.

F. The Commission, in its efforts to create affordable rental housing opportunities for persons and families of very low and low income, entered into an Owner Participation Agreement between the Commission and Participant dated _____, 2011 (the "**OPA**"). The OPA provides, among other things, for (i) Participant's redevelopment of the Property with the Housing Project, including ___ units to be available at an affordable rent as described in Recital E above (each an "**Affordable Unit**," and collectively, the "**Affordable Units**"); (ii) Commission's provision of certain financial assistance to Participant in connection with the development of the Affordable Units, and (iii) the establishment of certain covenants and restrictions to ensure redevelopment of the Property in accordance with this Agreement and the Implementation Plan. Under the OPA, the Commission has provided Participant with a deferred loan in the amount of _____ DOLLARS (\$_____) ("**Commission Loan**"). Participant has executed a promissory note for the Commission Loan ("**Commission Note**"), which is secured by a deed of trust recorded against the Property ("**Deed of Trust**").

G. Participant's continuous and faithful performance of all of Participant's obligations hereunder for the full term of this Agreement is a condition of forgiveness of the Commission Loan and provision of the Commission assistance under the OPA. Pursuant to the OPA, in the event of any default under this Agreement and following the expiration of all applicable notice and cure periods, Participant agrees to repay to Commission all amounts owing under the Commission Note.

H. Commission and Participant desire by the execution of this Agreement to assure the Property meets the requirements of California Health and Safety Code Sections 33334.3 and 33413, and the requirements of the Commission Inclusionary Policy and the Affordable Units remain affordable for a minimum of fifty-nine (59) years following the date of recordation of this Agreement.

NOW THEREFORE, the parties acknowledge and agree as follows:

ARTICLE 1. DEFINITIONS

1.01 **"Affordable Rent"** is the amount of rent considered as "affordable rent" for very low or low income households, adjusted for family size appropriate to the unit, less a utility allowance, pursuant to California Health and Safety Code Section 50053 or any successor statute thereto. If the statute is no longer in effect and no successor statute is enacted, the Commission shall establish the Affordable Rent for purposes of this Agreement. For purposes of this Section 1.01 "adjusted for family size appropriate to the unit" shall mean a household of two persons in the case of a one-bedroom unit, three persons in the case of a two-bedroom unit, four persons in the case of a three-bedroom unit, and five persons in the case of a four-bedroom unit.

1.02 **"Eligible Households"** shall mean households meeting the income restrictions as set forth in Section 2.01.

1.03 **"Area Median Income"** shall mean the median income for households in Alameda County, California, as published from time to time by the United States Department of Housing and Urban Development ("HUD") in a manner consistent with the determination of median gross income under Section 8 of the United States Housing Act of 1937, as amended, and as defined in Title 25, California Code of Regulations, Section 6932. In the event that such income determinations are no longer published by HUD, or are not updated for a period of at least 18 months, the Commission shall provide the Participant with other income determinations that are reasonably similar with respect to methods of calculation to those previously published by HUD.

1.04 **"Applicable Laws"** means all applicable laws, ordinances, statutes, codes, orders, decrees, rules, regulations, official policies, standards and specifications (including any ordinance, resolution, rule, regulation standard, official policy, condition, or other measure) of the United States, the State of California, the County of Alameda, City of Alameda, or any other political subdivision in which the Housing Project is located, and of any other political subdivision, agency or instrumentality exercising jurisdiction over the Commission, Participant or the Housing Project.

ARTICLE 2. RENT, INCOME AND OCCUPANCY RESTRICTIONS

2.01 Rent and Income Restrictions. All of the Affordable Units to be located on the Property shall be rented to income households whose income does not exceed the limits set forth below:

- (a) Not less than sixty-one (61) of the Affordable Units constructed on the Property shall be available to Eligible Households whose gross income does not exceed fifty percent (50%) of the Area Median Income at an Affordable Rent.

- (b) One (1) of the Affordable Units (the resident manager's unit) constructed on the Property shall be available to Eligible Households whose gross income does not exceed one hundred twenty percent (120%) of the Area Median Income at an Affordable Rent.

No less than one (1) person per bedroom shall be allowed. No more than two (2) persons shall be permitted to occupy a studio Affordable Unit, and no more than four (4) persons shall be permitted to occupy a two (2) bedroom Affordable Unit. Commission may make exceptions to the foregoing occupancy standards to the extent such exceptions are required by Applicable Laws, and do not increase Commission's obligations or liabilities under this Agreement, or diminish or impair Commission's rights and remedies under this Agreement.

Not more than once per year, Participant may adjust rents in occupied Affordable Units to the level allowed for the family size appropriate to the unit. Participant may adjust the rent upon vacancy of an Affordable Unit to the level allowed for the family size appropriate to the unit. Commission shall annually publish a list of all rent ceilings reflecting the annual adjustments in the income limits for Eligible Households provided by the HUD and the State of California Department of Housing and Community Development ("**HCD**"). Participant must notify each tenant and Commission in writing of any increase in monthly rent for an Affordable Unit at least thirty (30) days in advance of the effective rent adjustment date. The written notice of rent increase provided to Commission shall indicate: (1) the rent adjustment for each Affordable Unit; (2) the new rental amount for each Affordable Unit; and (3) the effective date of the adjustment for each Affordable Unit. Failure to provide the notice required shall be considered a default by Participant under this Agreement.

The determination of a status as an Eligible Household shall be made by Participant prior to initial occupancy of the Affordable Unit by such household and shall be subject to review and approval by Commission. The income of all persons residing in the Affordable Unit shall be considered for purposes of calculating the household income. Participant shall not discriminate against prospective tenants with qualified Public Housing Authority Section 8 certificates or vouchers who are otherwise qualified. Participant shall notify Commission in writing whenever the tenant in an Affordable Unit changes. The notice shall indicate the name and household size of the tenant vacating the Affordable Unit. Once the Affordable Unit is reoccupied, Participant shall notify Commission in writing of the new tenant's name, household size and income.

Immediately prior to the first anniversary date of the occupancy of an Affordable Unit by an Eligible Household, and on each anniversary date thereafter, Participant shall re-certify the income of the occupants of such Affordable Unit by obtaining a completed Tenant Income Certification based upon the current income of each occupant of the Affordable Unit. The Tenant Income Certification shall be in the form attached hereto as Exhibit B. If an occupant of an Affordable Unit no longer qualifies as an Eligible Household due to an increase in income above the limitation set forth in paragraph (a) of this Section 2.01, the occupant may continue to occupy the former Affordable Unit.

2.02 Marketing and Leasing Program.

Participant shall actively market rental of all units within the Housing Project, including the Affordable Units. Prior to lease-up of the Affordable Units, Participant shall provide Commission with a copy of its marketing program for the Housing Project, which shall include a marketing program for the Affordable Units ("**Affordable Units Marketing Program**"). Commission shall review the Affordable Units Marketing Program and either approve or request modifications to the Affordable Units Marketing Program within thirty (30) days after receipt. Participant shall provide monthly updates to the Affordable Units Marketing Program commencing thirty (30) days after the date the Affordable Units Marketing Program is initially approved by Commission until the Affordable Units are fully leased.

Participant is responsible for implementing the Affordable Units Marketing Program actively and in good faith. Commission may extend the required marketing period in its discretion if Participant delays implementation or otherwise fails to comply with the Affordable Units Marketing Program as approved by Commission.

ARTICLE 3. REPORTING REQUIREMENTS FOR HOUSING PROJECT

3.01 Reporting Requirements. Participant shall submit an annual report and income certification to the Commission. The report, at a minimum, shall include:

- (a) The number of persons per Affordable Unit;
- (b) Name of each Affordable Unit Tenant;
- (c) Initial occupancy date;
- (d) Rent paid per month; and
- (e) Gross income per year.

Such information shall be reported to the Commission pursuant to Health and Safety Code Section 33418, substantially in the form of the Certification of Continuing Compliance attached hereto as Exhibit C or in such other format as may be reasonably requested by Commission.

Annual income recertifications shall also contain those documents used to certify eligibility. Commission, from time to time during the term of this Agreement, may request additional or different information, if such information is required in order for the Commission to comply with its reporting requirements, and Participant shall promptly supply such additional or different information in the reports required hereunder. Participant shall maintain all necessary books and records, including property, personal and financial records, in accordance with requirements prescribed by the Commission with respect to all matters covered by this Agreement. Participant, at such time and in such forms as Commission may require, shall furnish to Commission statements, records, reports, data and information pertaining to matters covered by this Agreement. Upon reasonable advance request for examination by Commission, Participant, at any time during normal business hours, shall make available all of its records with respect to all matters covered by this Agreement. Participant shall permit Commission to audit, examine and make excerpts or transcripts from these records at Commission's sole cost.

The first annual report and annual income certification ("**Initial Report**") shall be submitted to the Commission within thirty (30) days of the date of the initial rental of all the Affordable Units on the Property. Subsequent annual reports and annual income certifications or recertifications shall be submitted to the Commission on the anniversary date of submittal of the Initial Report.

3.02 Commission Approval of Lease Forms. Commission shall have the right to review and approve Participant's form of lease for the Affordable Units, including disclosures of the affordability restrictions on the Affordable Units, prior to Owner's use of such form.

3.03 Verification of Citizenship or Qualified Alien Status. Participant shall verify the citizenship or qualified alien status of all adult tenants and all adult applicants for tenancy of the Affordable Units as required under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Public Law No. 104-193, 8 U.S.C. § 1621). Participant may charge a new tenancy applicant (but not an existing tenant) a reasonable eligibility verification fee only if approved in writing by the Commission. On an annual basis at the time of the annual income recertification, Participant shall verify the citizenship or qualified alien status of all Affordable Unit tenants.

Participant shall verify the citizenship or qualified alien status by causing the tenant or applicants for tenancy of all Affordable Units to complete and sign under penalty of perjury the HCD Benefit Status Form 1 (2/98) or such other form provided by HCD for this purpose. The signed forms shall be retained by Participant and shall be disclosed to Commission upon request.

All eligibility shall be conducted without regard to race, creed, color, gender, religion, age, disability, familial status or national origin of the tenant or applicant for tenancy.

ARTICLE 4. PROVISION OF SERVICES AND MAINTENANCE OF PROPERTY

4.01 Maintenance. During the term of this Agreement, Participant shall maintain, or cause to be maintained, the Property, including all improvements thereon, in a manner consistent with the provisions set forth therefor in the Alameda Municipal Code, and shall keep the entire Property free from any accumulation of debris or waste materials prior to and after construction.

If, at any time, Participant fails to maintain the Property, and has either failed to commence to cure such condition or to diligently prosecute to completion the condition or the condition is not corrected after expiration of sixty (60) days from the date of written notice from the Commission to the Participant, Commission may perform the necessary corrective maintenance, and Participant shall pay such costs as are reasonably incurred for such maintenance. The Commission shall have the right to place a lien on the Property should Participant not reimburse Commission for such costs within sixty (60) days following Commission's written demand for reimbursement of such costs. Participant, on behalf of itself, its heirs, successors and assigns, hereby grants to Commission and its officers, employees and agents, an irrevocable license to enter upon the Property to perform such maintenance during normal business hours after receipt of written notice from Commission and Participant's failure to cure or remedy such failure within sixty (60) days of such notice. Any such entry shall be

made only after reasonable notice to Participant, and Commission shall indemnify and hold Participant harmless from any claims or liabilities pertaining to any such entry by Commission. Failure by Participant to maintain the Property in the condition provided in this Article 4 may, in Commission's reasonable discretion, constitute a default under this Agreement.

ARTICLE 5. NO TRANSFER

5.01 Prohibition. Except with respect to Permitted Transferees (as defined below), Participant shall not make any total or partial sale, transfer, conveyance, encumbrance to secure financing, assignment or lease of the whole or any part of the Property, the Housing Project of this Agreement without the prior written approval of the Commission, which approval shall not be unreasonably withheld.

5.02 Permitted Transfers. Notwithstanding any other provision of this Agreement to the contrary, Commission approval of an assignment or transfer of this Agreement, the Commission Loan, the Commission Note, the Deed of Trust, the OPA, or conveyance of the Property or any part thereof shall not be required in connection with any of the following (the "**Permitted Transfers**"):

- (a) The lease of Affordable Units to Eligible Households.
- (b) Assignments for financing purposes, and any subsequent transfer to the lender providing such financing by foreclosure or deed in lieu of foreclosure thereunder, subject to such financing being considered and approved by the Commission as provided in the OPA.
- (c) Transfer of the Property and Housing Project to an affiliate entity which controls, is controlled by or under common control with Participant.
- (d) In the event of an assignment by Participant pursuant to subparagraph (c) not requiring the Commission's prior approval, Participant nevertheless agrees that at least thirty (30) days prior to such assignment or transfer it shall give written notice to the Commission of such assignment or transfer and that such transferee shall be required to assume Participant's obligations under this Agreement, the Commission Note, the Deed of Trust and the OPA pursuant to a written assignment and assumption agreement in a form reasonably acceptable to Commission counsel.
- (e) A transfer as otherwise permitted pursuant to the OPA.

5.03 Commission Consideration of Requested Transfer. The Commission agrees that it will not unreasonably withhold approval of a request made pursuant to this Article 5 provided (a) the Participant delivers written notice to the Commission requesting such approval, and (b) the proposed assignee or transferee possesses comparable operational experience and capability, and comparable net worth and resources, as Participant, and (c) the assignee or transferee assumes the obligations of the Participant under this Agreement pursuant to a written assignment

and assumption agreement in form reasonably acceptable to the Commission counsel. Such notice shall be accompanied by evidence regarding the proposed assignee's or purchaser's qualifications and experience and its financial commitments and resources sufficient to enable the Commission to evaluate the proposed assignee or purchaser pursuant to the criteria set forth herein and other criteria as reasonably determined by the Commission. The Commission shall approve or disapprove the request within forty-five (45) days of its receipt of the Participant's notice and all information and materials required herein. In no event, however, shall the Commission be obligated to approve the assignment or transfer of the Commission Loan, Commission Note or Deed of Trust, except to an approved transferee or assignee of the Participant's rights in and to the Property and Housing Project.

ARTICLE 6. NO DISCRIMINATION

Participant covenants, by and for itself and any successors in interest, that there shall be no discrimination against or segregation of any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property, nor shall Participant, itself or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, subleases or vendees in the Property.

ARTICLE 7. NONDISCRIMINATION AND NONSEGREGATION CLAUSES

All deeds, leases or contracts made relative to the Property, the improvements thereon or any part thereof, shall contain or be subject to substantially the following nondiscrimination and nonsegregation clauses:

(a) In deeds:

1. "The grantee herein covenants, by and for himself or herself, his or her heirs, executors, administrators, and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of any person or group of persons on any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the land herein conveyed, nor shall the grantee, himself or herself or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees,

subtenants, subleases or vendees in the land herein conveyed. The foregoing covenants shall run with the land."

2. Notwithstanding paragraph 1., with respect to familial status, paragraph 1. shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code, if applicable. With respect to familial status, nothing in paragraph 1. shall be construed to affect Section 51.2, 51.3, 51.4, 51.10, 51.11 and 799.5 of the Civil Code relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivision (n), (o), and (p) of Section 12955 of the Government Code shall apply to paragraph 1.

- (b) **In leases:** "The lessee herein covenants, by and for himself or herself, his or her heirs, executors, administrators and assigns, and all persons claiming under or through him or her, and this lease is made and accepted upon and subject to the following conditions:

1. That there shall be no discrimination against or segregation of any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the land herein leased, nor shall the lessee, himself or herself or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subleases, subtenants or vendees in the land herein leased."
2. Notwithstanding paragraph 1., with respect to familial status, paragraph 1. shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code, if applicable. With respect to familial status, nothing in paragraph 1. shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11 and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivisions (d) of Section 51 and Section 1360 of the Civil Code and subdivision (n), (o), and (p) of Section 12955 of the Government Code shall apply to paragraph 1.

- (c) **In contracts:** "There shall be no discrimination against or segregation of any person or group of persons on any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the

sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the land, nor shall the transferee, himself or herself or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subleases, subtenants or vendees in the land." The contract shall further specify that the foregoing provisions shall be binding on the contracting party or parties, any subcontracting party or parties or other transferees under the instrument.

ARTICLE 8. NO IMPAIRMENT OF LIEN

No violation or breach of the covenants, conditions, restrictions, provisions or limitations contained in this Agreement shall defeat or render invalid or in any way impair the lien or charge of any mortgage, deed of trust or other financing or security instrument; provided, however, that any successor of Participant to the Property and Housing Project shall be bound by such covenants, conditions, restrictions, limitations and provisions, whether such successor's title was acquired by foreclosure, deed in lieu of foreclosure, trustee's sale or otherwise..

ARTICLE 9. DURATION

The covenants contained in Articles 2, 3, 4 and 5 of this Agreement shall be deemed to run with the Property and Housing Project until the date which is fifty-nine (59) years following the Effective Date. The covenants against discrimination contained in Articles 6 and 7 of this Agreement shall run with the land in perpetuity.

ARTICLE 10. SUCCESSORS AND ASSIGNS

The covenants contained in the Agreement shall be binding upon Participant and its heirs, successors and assigns, and such covenants shall run in favor of the Commission and its successors and assigns for the entire period during which such covenants shall be in force and effect, without regard as to whether the Commission is or remains an owner of any land or interest therein to which such covenants relate. In the event of any breach of any such covenants, or breach of any of Participant's obligations under this Agreement, Commission and its successors and assigns (which may include the City of Alameda) shall have the right to exercise all of the rights and remedies, and to maintain any actions at law or suits in equity or other proper proceedings to enforce the curing of such breach. The covenants contained in the Agreement, without regard to technical classification and designation, shall be for the benefit of and shall be enforceable only by the Commission, and its successors and assigns.

ARTICLE 11. SUBORDINATION AGREEMENT

This Agreement shall have priority over the liens of all mortgages, deeds of trust and other liens (other than the lien for current, unpaid property taxes) and Participant shall cause all such mortgagees, deed of trust beneficiaries and other lien holders to execute and deliver to Commission for recordation in the Official Records of Alameda County, a subordination agreement, in a form reasonably acceptable to Commission, subordinating such mortgages, deeds

of trust and other liens to this Agreement thereby ensuring the priority of this Agreement over all such mortgages, deeds of trust and other liens.

ARTICLE 12. DEFAULT

Any failure by Participant to perform any term or provision of this Agreement shall constitute a "**Default**" (1) if Participant does not cure such failure within thirty (30) days following written notice of default from Commission, or (2) if such failure is not of a nature which can be cured within such thirty (30) day period, Participant does not commence substantial efforts to cure the failure within thirty (30) days and thereafter prosecute to completion with diligence and continuity the curing of such failure. Any notice of default given under this Agreement shall identify the nature of the failure in performance which Commission claims constitutes the Default and the manner in which such Default may be satisfactorily cured. Any failure or delay by Commission in asserting any of its rights or remedies, including specific performance, as to any Default shall not operate as a waiver of any Default or of any such rights or remedies or deprive Commission of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

ARTICLE 13. NOTICES, DEMANDS AND COMMUNICATIONS

Any approval, disapproval, demand, document or other notice to be provided under this Agreement shall be given in writing and shall be sent: (a) for personal delivery by a delivery service that provides a record of the date of delivery, the individual to whom delivery was made, and the address where delivery was made; (b) by first-class certified United States mail, postage prepaid, return receipt requested; or (c) by a nationally recognized overnight courier service and marked for next day business delivery. All notices shall be addressed to the party to whom such notice is to be given at the property address stated herein or to such other address as a party may designate by written notice to the other. Any written notice, demand or communication shall be deemed received: (a) immediately if delivered by personal deliver as provided hereinabove; (b) on the third (3rd) day from the date it is postmarked if delivered by first-class mail, postage prepaid, return receipt requested; and (c) on the next business day if sent via nationally recognized overnight courier and marked for next day business delivery. Notices sent by a party's attorney on behalf of such party shall be deemed delivered by such party.

To Commission:	Community Improvement Commission of the City of Alameda c/o Housing Authority 701 Atlantic Avenue Alameda, CA 94501 Attention: Executive Director
----------------	--

With a copy to: City of Alameda
2263 Santa Clara Avenue
Alameda, CA 94501
Attention: City Attorney

To Participant _____

Attention: _____

With a copy to: _____

Attention: _____

ARTICLE 14. ATTORNEYS' FEES

In any action or proceeding which either party brings against the other to enforce its rights hereunder, the unsuccessful party shall pay all costs incurred by the prevailing party, including reasonable attorneys' fees, which amounts shall be a part of the judgment in any action or proceeding.

ARTICLE 15. RECORDATION OF AGREEMENT

Immediately following the Effective Date, this Agreement and, pursuant to Section 33334.3(f)(3) of the Community Redevelopment Law, the Notice of Affordability Restrictions on Transfer of Property in the form attached hereto as Exhibit D, shall be recorded against the Property in the Official Records of Alameda County.

ARTICLE 15. MISCELLANEOUS

Each party agrees to cooperate with the other in the implementation and administration of this Agreement and, in that regard, shall execute any and all documents which may be reasonably necessary, helpful, or appropriate to carry out the purposes and intent of this Agreement. This Agreement may be signed in multiple counterparts which, when signed by all parties, shall constitute a binding agreement. The words "include" and "including" shall be construed as if followed by the words "without limitation." All exhibits and attachments hereto are incorporated by reference as though fully restated herein. This Agreement shall be interpreted as though prepared jointly by both parties, and shall be construed in accordance with and be governed by the laws of the State of California. If any provision of this Agreement shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby. A waiver by either party of a breach of any of the covenants, conditions or agreements hereunder to be performed by the other party shall not be construed as a waiver of any succeeding breach of the same or other

covenants, agreements, restrictions or conditions hereof. No waiver by Commission of any of the conditions hereof shall be effective unless in writing expressly identifying the scope of the waiver and signed on behalf of an authorized official of Commission. Any alteration, change or modification of or to the Agreement, in order to become effective, shall be made in writing and in each instance signed on behalf of each party hereto.

IN WITNESS WHEREOF, the Commission and Participant have caused this Agreement to be executed on their behalf by their respective officers thereunto duly authorized, on the Effective Date first above written.

CIC:

Community Improvement Commission of the City of Alameda,
a public body, corporate and politic

By: _____
Name: _____
Executive Director

Approved as to form:

By: _____
Farimah Faiz
Assistant General Counsel

Recommended for Approval:

By: _____
Michael T. Pucci
Executive Director
Housing Authority of the City of Alameda

PARTICIPANT::

_____, a

By: _____
[Signature must be notarized]

Print Name: _____

Its: _____

By: _____
[Signature must be notarized]

Print Name: _____

Its: _____

NOTARY ACKNOWLEDGMENTS

[TO BE INSERTED]

EXHIBIT A

Description of Property

Exhibit A

EXHIBIT B

Tenant Income Certification

Project: _____

Date: _____

Affordable Units: ☐ 50% of Median Income
☐ 80% of Median Income
☐ 120% of Median Income

Address/Unit Number: _____ Rent: _____

Tenant/Household Name: _____ Date of Lease: _____

Size of Household: _____ Expiration: _____

Total Household Income: _____ per year

The following list includes each member of the household and their income. Attached are federal or state income tax returns for the most recent tax year, current stubs from paychecks or other evidence of the income of each income-producing member of the household.

Name of Household Member	Relationship	Age	Social Security Number	Annual Income	Source of Income/ Name of Employer
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____

I/We the undersigned have read and answered fully, frankly and personally each of the above questions under penalty of perjury and do hereby swear they are true.

Head of Household Date

Participant/ Agent Date

EXHIBIT C

CERTIFICATION OF CONTINUING COMPLIANCE

Project: _____

Date: _____

Total Affordable Housing Units in Project:

Very Low Income Units (not to
exceed 50% of Median Income): _____

Low Income Units (not to
exceed 80% of Median Income): _____

Moderate Income Units (not to
exceed 120% of Median Income): _____

The Participant, in accordance with the Affordable Housing Agreement, dated _____, does hereby certify to the Community Improvement Commission of the City of Alameda that during the preceding year, the units identified on the following pages were occupied in accordance with the Affordable Housing Agreement and does hereby further certify that the representations set forth herein are true and correct to the best of the undersigned's knowledge.

Signed: _____
Participant/ Agent

Date: _____

[See Attached]

Exhibit C

ANNUAL COMPLIANCE REPORT

Project: _____

Date: _____

Very Low Income Units (Not to Exceed 50% of Median Income)

Unit No./Address	Type	Tenant Name	Annual Household Income	Number in Household	Monthly Rent
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____

(Attach additional sheets as required.)

Signed: _____

Participant / Agent

Date: _____

Exhibit C

ANNUAL COMPLIANCE REPORT

Project: _____

Date: _____

Low Income Units (Not to Exceed 80% of Median Income)

Unit No./Address	Type	Tenant Name	Annual Household Income	Number in Household	Monthly Rent
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____

(Attach additional sheets as required.)

Signed: _____
Participant / Agent

Date: _____

Exhibit C

ANNUAL COMPLIANCE REPORT

Project: _____

Date: _____

Moderate Income Units (Not to Exceed 120% of Median Income)

Unit No./Address	Type	Tenant Name	Annual Household Income	Number in Household	Monthly Rent
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____

(Attach additional sheets as required.)

Signed: _____
Participant / Agent

Date: _____

Exhibit C

EXHIBIT D

Notice of Affordability Restrictions on Transfer of Property

[to be inserted]

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

Space Above This Line For Recorder's Use Only

**NOTICE OF AFFORDABILITY RESTRICTIONS
ON TRANSFER OF PROPERTY**

Important notice to owners, purchasers, tenants, lenders, brokers, escrow and title companies, and other persons, regarding affordable housing restrictions on the real property described in this Notice: Restrictions have been recorded with respect to the property described below (referred to in this Notice as the "Property") which restrict the price and terms at which the Property may be sold or rented. These restrictions may limit the sales price or rents of the Property to an amount which is less than the fair market value of the Property. These restrictions also limit the income of persons and households who are permitted to purchase and rent the Property.

Title of Document Containing Affordable Housing Restrictions: Affordable Housing Covenant (referred to in this Notice as the "Affordable Housing Restrictions").

Parties to Affordable Housing Restrictions:

_____ Redevelopment Agency ("Agency") and
_____ ("Owner").

The Affordable Housing Restrictions are recorded: (check one)

- ☐ as Document No. _____, official records of
_____ County, on _____; or
- ☐ concurrently with this Notice, official records of _____ County.

Legal Description of Property:

See Exhibit A (Attached hereto)

Street Address of Property: _____, Unit No. _____,
_____, California.

Assessor's Parcel Number of Property: _____

Summary of Affordable Housing Restrictions (*check as applicable*):

☐ The Affordable Housing Restrictions restrict the amount of rent which may be charged for the rental housing unit or units on the Property, as follows:

_____.

☐ The Affordable Housing Restrictions restrict the sales price which may be charged for the sale of the ownership housing unit or units on the Property, as follows: _____.

☐ The Affordable Housing Restrictions restrict the income level of the tenant or buyer of the Property, as follows:

_____.

☐ Term of Restrictions: _____ years, commencing on _____ and terminating on _____.

This Notice does not contain a full description of the details of all of the terms and conditions of the Affordable Housing Restrictions. You will need to obtain and read the Affordable Housing Restrictions to fully understand the restrictions and requirements which apply to the Property. In the event of any conflict between the terms of this Notice and the terms of the Affordable Housing Restrictions, the terms of the Affordable Housing Restrictions shall control.

This Notice is being recorded and filed in compliance with Health and Safety Code Section 33334.3(f)(3) and (4), and shall be indexed against the Agency and the current Owner of the Property.

REDEVELOPMENT AGENCY:

Dated: _____, 200__

By: _____
Executive Director

OWNER:

Dated: _____, 200__

ACKNOWLEDGMENTS

State of California

County of _____

On _____ before me, _____,
(here insert name and title of the officer)

personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

(Seal)

~~~~~

State of California

County of \_\_\_\_\_

On \_\_\_\_\_ before me, \_\_\_\_\_,  
(here insert name and title of the officer)

personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_

(Seal)

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

**[To Be Inserted.]**